

EXHIBIT L

PROCEEDINGS April 24, 2007

1 Q. Yes.

2 A. No.

3 Q. Okay. In the hospital, generally there are
4 what are called general overhead pages. You could be
5 walking around and hear a page of some sort in the
6 hospital hallways; correct?

7 A. Yes.

8 Q. All right. Can those pages be heard within the
9 OR suites?

10 A. The overhead pages?

11 Q. Yes.

12 A. There's -- there's two different paging
13 systems.

14 Q. All right. Let's talk about the general
15 hospital paging system code blue in, you know, some
16 ward. That's not heard in the operating room, is it?

17 A. No. But it can be heard in the anesthesia
18 ward.

19 Q. All right. If I wanted to page into a
20 particular OR, it's possible to dial, if you will, a
21 particular room and page; is that correct?

22 A. Yes.

23 Q. Okay. Is it also correct that in the OR room
24 when the procedure is taking place, there's a fair
25 amount of -- can be a fair amount of cross talk among

PROCEEDINGS April 24, 2007

1 the practitioners who are present?

2 A. During a case?

3 Q. Yes.

4 A. Yes.

5 Q. Is it also true that a number of surgeons play
6 music during the procedures that they're -- can be
7 playing during the surgeries?

8 A. Yes.

9 Q. And it's fairly loud at times, isn't it?

10 A. What do you mean -- what is loud? I mean --

11 Q. Well, it's turned up loudly enough to be heard
12 over the cross talk and, et cetera; right?

13 A. Yes. It's clearly audible. You can hear it,
14 yes.

15 Q. That's why it's on, so it can be heard; right?

16 A. Yes.

17 Q. So isn't it true that, as a practical matter,
18 if one of the anesthesiologists in any of the OR suites
19 needs something of an immediate nature, they use the
20 Spectralink phone to make immediate contact with
21 someone? Isn't that what happens as a practical matter?

22 A. They can call that or they can call the
23 workroom -- the anesthetic workroom.

24 Q. Don't they tend to call the Spectralink phone,
25 in fact, initially based on your actual experience

1 because that's the more immediate contact?

2 A. Depending on where they're -- they are because
3 we have other areas. And if they do need assistance --
4 if they need immediate contact for an out-of-department
5 case, they will call that out-of-department Spectralink.

6 Q. I'm talking about the main OR with the 21
7 suites in operation. Isn't it true that they use the
8 Spectralink phone as the first mode of contact?

9 A. They use it as a mode of contact. I don't know
10 if it's the first mode. I can't determine that because
11 I'm not in the room with the physician.

12 Q. Isn't that the one that's supposed to be
13 immediately answered by a human being --

14 A. Yes.

15 Q. -- the Spectralink phone?

16 A. Yes. It's used -- yes, for direct contact.

17 Q. And if you called into the workroom, you might
18 or might not find somebody there to answer the phone;
19 right?

20 A. Yes.

21 Q. Exhibit 3 which is the job description for the
22 lead position has a date of March 24, 2006 in the upper
23 right. Is that how you would read that date?

24 A. Yes.

25 Q. Okay. Do you know whose signature which is

PROCEEDINGS April 24, 2007

1 approving that?

2 A. It looks like our OR -- current OR director.

3 Q. Who is that?

4 A. Betsy Musselman.

5 Q. Okay. When this lead was employed for
6 approximately one year as you testified, she was
7 assigned -- it was a woman; is that correct?

8 A. Yes.

9 Q. -- was assigned on the day shift; is that
10 right?

11 A. Yes.

12 Q. There was no lead assigned on either the p.m.
13 or the night; right?

14 A. Yes.

15 Q. Did you continue carrying the Spectralink phone
16 after the lead position was created sometime in -- or
17 filled, rather, sometime in the early part of 2006?

18 A. Did I carry it?

19 Q. Yes. As a --

20 A. I was a tech.

21 Q. As a tech.

22 A. Did I ever carry the lead phone?

23 Q. No. Bad question if you didn't understand it.
24 Withdraw it.

25 This -- a lead person is hired apparently in

PROCEEDINGS April 24, 2007

1 March roughly of 2006 and works until roughly March of
2 2007.

3 A. Correct.

4 Q. All right. And you assumed your present job in
5 January 2007?

6 A. Correct.

7 Q. So you were working as a bargaining unit tech
8 after the lead was hired; is that correct?

9 A. Correct.

10 Q. Okay. And did you in that timeframe, prior to
11 assuming your present job, also carry the Spectralink
12 phone?

13 A. Yes.

14 Q. And did you continue to receive approximately
15 the same number of calls on those occasions when you did
16 carry it?

17 A. Yes.

18 Q. And were they generally of the same nature of
19 the -- as the kind of calls you received previously?

20 A. Yes.

21 Q. And did you have the same responsibilities as
22 you just talked to us about with regard to filling out
23 some of the forms you've testified to?

24 A. Yes.

25 Q. Did you have the same responsibility to hand

PROCEEDINGS April 24, 2007

1 the phone off and make a report to the next shift?

2 A. Yes.

3 Q. So it's fair to say, isn't it, nothing about
4 the assignment changed when the lead became employed?
5 Is that a fair statement?

6 A. Yes.

7 MR. HARRINGTON: No other questions.

8 REDIRECT EXAMINATION BY MR. ARNOLD
9 BY MR. ARNOLD:

10 Q. Ms. Alejandro, there's been talk about
11 anesthesia tech assignments. At the start of the day is
12 an anesthesia tech assigned, for instance, today you're
13 responsible for OR suites 1 through 5?

14 A. No.

15 Q. So there's no specific assignment that -- that
16 a tech gets?

17 A. Not specific to an OR suite.

18 Q. They're just -- they're supposed to deal with
19 whatever comes up during the course of the day?

20 A. So if a call light OR No. 10 came out, any tech
21 that was in the workroom that saw that light, would be
22 able to, you know, answer that request.

23 Q. So --

24 A. They're not designated tech for an OR suite.

25 Q. So when someone was assigned the Spectralink

1 phone, basically their assignment for that day was to
2 answer whatever calls came in, and if there weren't
3 calls coming in, do like any other tech; is that
4 correct?

5 A. Correct.

6 Q. So it's not like the person carrying the
7 Spectralink phone had to be responsible for OR suite 1
8 through 5, plus carry the Spectralink phone?

9 A. Correct.

10 Q. And so if they were getting a lot of calls, is
11 it possible that the person carrying the Spectralink
12 phone simply spends the day responding to all the calls
13 they get?

14 A. Can you repeat the question?

15 Q. So on a busy day when someone carrying the
16 Spectralink phone is getting a lot of calls, can they
17 just spend their shift basically responding to all of
18 those calls?

19 A. They can -- they can respond to the calls, they
20 could also call the workroom, which has occurred, to
21 have the other techs assist in providing those requests
22 for the physicians.

23 Q. But it's not like they're leading -- their
24 specified assignment of OR 1 through 5 to handle all
25 these calls, their -- their job is sort of to be the

1 first person to take a call during that time period?

2 A. Yes.

3 Q. You were asked about the ASC. The ASC, does
4 that have a low volume of work in the ambulatory
5 surgical center?

6 A. It varies from day to day. It can be -- vary
7 from 30 to 60 cases.

8 Q. And do the cases there tend to be shorter cases
9 than main OR cases?

10 A. Typically.

11 Q. Does that mean that the case -- the OR suites
12 in the ambulatory surgical center turn over more
13 frequently and more quickly than the main OR?

14 A. Yes.

15 MR. ARNOLD: No further questions.

16 RECROSS EXAMINATION BY MR. HARRINGTON
17 BY MR. HARRINGTON:

18 Q. With respect to the assignment of carrying the
19 Spectralink phone in the main OR, the fact is that the
20 person with that phone had to deal with that phone as
21 well as do all the regular duties that all of the other
22 techs were assigned to that day; isn't that correct?

23 A. Yes, within time allotted for that shift.

24 Q. All right. It's an eight-hour shift; right?

25 A. Yes.

PROCEEDINGS April 24, 2007

1 Q. Okay. So the carrying of the phone is in
2 addition to the other typical normal responsibilities
3 they're assigned to?

4 A. Yes. Just along with the other techs that are
5 assigned.

6 Q. But only one of the techs in the main OR has
7 that phone; right --

8 A. Yes.

9 Q. -- on any given shift?

10 A. Yes. It's just one task out of other tasks
11 that are assigned.

12 MR. HARRINGTON: Nothing else.

13 REDIRECT EXAMINATION BY MR. ARNOLD

14 BY MR. ARNOLD:

15 Q. So, again, if I understand your testimony
16 earlier, it's not like -- or let me ask you a question.
17 At the start of the shift, does an anesthesia tech have
18 to accomplish this 30 things today?

19 A. No.

20 Q. So if they -- and any tech can get sidetracked
21 by a request; is that right?

22 A. Yes.

23 Q. And so if they get sidetracked by a request,
24 then another tech might go close a room or get a room;
25 is that correct?

1 A. Correct.

2 Q. So if someone has the Spectralink phone, and
3 they spend a lot of time responding to requests made
4 over that Spectralink phone, at the end of the shift
5 does someone look and say you didn't handle these 12
6 tasks because you were doing the Spectralink phone and
7 we expected you to do these 12 tasks plus the
8 Spectralink phone?

9 A. No.

10 Q. So the assignment -- during the course of the
11 assignments that or the duties that an anesthesia tech
12 performed during the course of a shift, varied from
13 shift to shift?

14 A. Yes.

15 Q. It's a fluid job?

16 A. Yes.

17 MR. HARRINGTON: Are you testifying or are you
18 asking questions. Object to the endless number of
19 leading questions?

20 THE ARBITRATOR: Well, I think they are leading
21 and all the attorneys -- good ones, especially, will try
22 to get away with that if they can to move things along
23 and since -- now, that you've raised the issue, I guess
24 he won't do it as much.

25 MR. ARNOLD: Right. I don't have any more

PROCEEDINGS April 24, 2007

1 questions. I won't do it again.

2 MR. HARRINGTON: You won't do it at all.

3 MR. ARNOLD: Unless I have more questions as a
4 result of this.

5 THE ARBITRATOR: Are do you have anything
6 further, Mr. Harrington, leading or otherwise?

7 MR. HARRINGTON: Well, I can beat it. I'm
8 going to cross.

9 RE CROSS EXAMINATION BY MR. HARRINGTON
10 BY MR. HARRINGTON:

11 Q. Do you know why -- strike that.

12 Did you acquire any understanding when you were
13 working in the unit prior to becoming an manager, why
14 this assignments way rotated among the techs?

15 A. Why it was rotated?

16 Q. Yes.

17 A. No.

18 Q. Okay. Did it result in all the techs getting
19 some opportunity to receive this differential pay?

20 A. Yes.

21 Q. Okay. Did it also create a scenario in which
22 the same person didn't have it day after day after day?

23 A. Yes.

24 MR. HARRINGTON: That's all I have.

25 MR. ARNOLD: Nothing further.

PROCEEDINGS April 24, 2007

1 THE ARBITRATOR: Okay. Thank you,
2 Ms. Alejandro.

3 THE WITNESS: Thank you. Do you need these
4 paper -- documents back.

5 THE ARBITRATOR: You can leave it there.

6 MR. ARNOLD: Going off the record for a few
7 minutes.

8 THE ARBITRATOR: Certainly, certainly.

9 (Recess.)

10 SHERYL MICHELSON,
11 having first been duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION BY MR. ARNOLD

14 BY MR. ARNOLD:

15 Q. Could you please state and spell your name for
16 the record.

17 A. Sheryl Michelson -- S-H-E-R-Y-L,
18 M-I-C-H-E-L-S-O-N.

19 Q. Now, above there's some airflow issues and
20 you're talking over top of this screen. When you answer
21 questions, if you could keep your -- and I think you
22 will, but keep your voice up and don't go too fast. She
23 has to --

24 Are you currently employed by Stanford Hospital
25 and Clinics?

PROCEEDINGS April 24, 2007

1 A. Yes, I am.

2 Q. And how long have you worked for Stanford?

3 A. Twenty-six years.

4 Q. What is your current position?

5 A. Manager of perioperative education.

6 Q. And how long have you held that position?

7 A. Six, eight years.

8 Q. And what other positions have you held prior to
9 becoming the manager of perioperative education?

10 A. I was a clinic educator. I was manager of the
11 main operating room. I've been manager of the orderly
12 department. I've been manager of the pre-op PACU and
13 surgery admitting unit twice.

14 Q. And does the -- as manager of the perioperative
15 education, does the perioperative region include the
16 anesthesia department?

17 A. Yes, it does.

18 Q. And do you ever have occasion to act as
19 administrator on call?

20 A. Yes, I do.

21 Q. And what is "administrator on call?"

22 A. You're responsible from approximately three
23 o'clock on Friday till 6:45 on Monday morning and
24 holidays for the total administration of the operative
25 region.

1 Q. And does that include the anesthesia region
2 area?

3 A. Yes, it does.

4 Q. Have there ever been occasion when you have
5 acted directly in some management capacity over the
6 anesthesia department?

7 A. Yes, I have.

8 Q. And what would those occasions -- what kind of
9 occasion would require that?

10 A. I've been asked multiple times to cover for the
11 manager when they've been on vacation, medical leaves,
12 take weekends off, personal days when they're out of the
13 department.

14 Q. And through your duties both past and present
15 at Stanford, have you become familiar with the various
16 job positions that exist within the anesthetic
17 department?

18 A. Yes, I have.

19 Q. And have you become familiar with the duties
20 associated with those positions?

21 A. Yes, I have.

22 Q. And specifically, are you familiar with the job
23 classification numbers anesthesia tech?

24 A. Yes, I am.

25 Q. We've had testimony already, so just briefly

PROCEEDINGS April 24, 2007

1 could you describe what the role of a anesthesia tech
2 is?

3 A. They are responsible for providing assistance
4 to the anesthesiologists to provide care for the
5 patients in and out of the operating room that require
6 anesthesia. They are responsible for equipment,
7 supplies, materials. They sometimes help with patient
8 care by helping to hold a patient or position a patient.

9 Q. Do they respond to physician and nurse
10 requests?

11 A. Yes, they do.

12 Q. I'm going to show you a document that's been
13 marked as Employer's Exhibit No. 1, and can you --

14 THE ARBITRATOR: If you have a copy -- do you
15 have a copy for yourself? I can share it.

16 MR. HARRINGTON: This maybe here. Let me
17 check.

18 MR. ARNOLD: I think it's probably in that
19 stack.

20 MR. HARRINGTON: That's the tech -- this one
21 here. That's No. 1. It's at the bottom right.

22 BY MR. ARNOLD:

23 Q. I'm going to ask you to look at that document
24 and after you've had an opportunity to do so, tell me if
25 you recognize it.

PROCEEDINGS April 24, 2007

1 A. Yes, I do. It's our job description.

2 Q. And it's a job description for?

3 A. The anesthetic technician.

4 Q. Did you have any role with regard to the
5 preparation of this job description?

6 A. I wrote it.

7 Q. That's included among your functions and duties
8 and responsibility?

9 A. I'm responsible for all the job descriptions in
10 the perioperative region.

11 Q. And as the creator of this document, can you
12 tell us whether it accurately reflects what the expected
13 functions of an anesthesia tech are?

14 A. Overall, it does.

15 Q. And I'm going to ask you to take a look also at
16 another document that's been marked as Employer 3, and
17 I'll ask you the same thing. Please look at it and tell
18 me after you've looked at it whether you recognize it?

19 A. Yes, I do.

20 Q. Can you tell us what it is?

21 A. It's a lead anesthesia technician job
22 description.

23 Q. And although you've sort of already answered
24 the question, did you have any role with respect to the
25 creation of this document?

PROCEEDINGS April 24, 2007

1 A. Yes. I wrote it.

2 Q. Now, one of the things that an anesthesia tech
3 does, I believe you testified, was respond to requests
4 for assistance; is that correct?

5 A. That is correct.

6 Q. How would someone make a request of an
7 anesthesia tech for assistance in the context of, let's
8 say, the main OR?

9 A. They have a lot of different options. They can
10 talk to them in person. They can call the landline in
11 the anesthetic workroom. They can call a Spectralink
12 phone. They can overhead page them.

13 Q. And the Spectralink phone, can you tell us what
14 is the Spectralink phone?

15 A. It's like a cordless phone that you have a
16 phone at home that we can use it around the operative
17 area to talk to different people without -- and people
18 walking around with it.

19 Q. And are there more than one Spectralink phone
20 that anesthesia techs might carry or is there just one?

21 A. There's more than one in the department.

22 Q. Okay. And who -- how many are there, if you
23 know?

24 A. Four or five.

25 Q. And how are they distributed, if you know?

PROCEEDINGS April 24, 2007

1 A. By job functions.

2 Q. And can you tell us what job -- can you explain
3 that, please.

4 A. They have one over in ASC. They have one in
5 the main OR. They have one for the people who are on
6 out-of-department cases. They have one in the main OR
7 extension, and the lead usually carries one.

8 Q. And they each have a different number?

9 A. That's correct.

10 Q. Now, you mentioned overhead pages. Do you have
11 occasion to be in the operating rooms from time to time?

12 A. All the time.

13 Q. Based on your own experience, do the -- does
14 the overhead paging system work inside the operating
15 room?

16 A. Yes, it does.

17 Q. Have you ever been paged overhead while you're
18 in an operating room?

19 A. Yes, I have.

20 Q. And if you know, does the overhead paging
21 system also -- can it be heard in -- do you ever have
22 occasion to go into the anesthesia workroom?

23 A. Yes, I do.

24 Q. If you know based on your own experience, can
25 you hear overhead paging in the anesthesia workroom?

PROCEEDINGS April 24, 2007

1 A. I've heard -- have heard it before, yes.

2 Q. To your knowledge -- have you ever operated the
3 Spectralink phone?

4 A. Yes, I have.

5 Q. Does it take any special training to learn how
6 to operate the Spectralink phone?

7 A. No.

8 Q. Does carrying the Spectralink phone -- if you
9 know, does it involve more work for the particular tech
10 who is carrying it on a given shift?

11 A. It may or may not.

12 Q. And can you explain that answer.

13 A. It really depends on what's called in that day.
14 How busy the OR is or whether or not it causes more or
15 less work.

16 Q. How long does the Spectralink phone -- if you
17 know, how long have they been employed?

18 A. I don't think -- you know, I want to say maybe
19 two or three years. They're fairly new technology.

20 Q. Was there any means of contacting -- other than
21 the landline or the overhead page or the call light, was
22 there other means of contacting techs prior to bringing
23 in Spectralink phones?

24 A. Pagers.

25 Q. And these are the type of pagers that you hook

1 on your belt or carry in your pocket?

2 A. That's correct.

3 Q. Compared to carrying the pager versus carrying
4 a Spectralink phone, if you were getting the same number
5 of pages as you were getting phone calls, which would
6 involve more work for the tech: Pager or Spectralink
7 phone?

8 A. Oh, the pager, definitely.

9 Q. Why is that?

10 A. Because when you get the page, then you have to
11 go find a phone somewhere. And so when you're paged,
12 you look at the number, you've got to go find a phone,
13 then you have to call. Then you have to get what you
14 need, then you have to go back. Sometimes you're paged
15 again and have to go find a phone and go back again.

16 With a Spectralink you can immediately find out
17 what people need, and it saves steps and saves looking
18 for a telephone.

19 Q. Let's take the main OR again. Let's say a tech
20 is not carrying a Spectralink phone on a particular
21 shift, is that tech still expected to respond to
22 requests that are made through the other forms of
23 communication?

24 A. Yes.

25 Q. If they are walking down the corridors outside

PROCEEDINGS April 24, 2007

1 the OR and an anesthesiologist or a nurse makes a
2 request of them, are they expected to respond to that?

3 A. That's correct.

4 Q. And if they see a call light on when they're in
5 the workroom, are they expected to respond to that?

6 A. Yes, they do.

7 Q. And if they are in the call -- in the workroom
8 and get a landline call, are they expected to answer and
9 respond to that?

10 A. Yes, they are.

11 Q. Now, you've already identified the job
12 description and stated you prepared it. Are you
13 familiar with the job classification known as lead
14 anesthesia tech?

15 A. Yes, I am.

16 Q. And what are the duties of the lead anesthesia
17 tech?

18 A. They assist in the daily operations of the
19 department. They work as a second-hand person to the
20 manager. They help with giving breaks and lunches and
21 assigning them, making sure all the needs of the
22 department are dealt with.

23 They're also responsible for providing coaching
24 and feedback to the staff, orienting people; making sure
25 if someone else is orienting an employee, that it's

PROCEEDINGS April 24, 2007

1 being done correctly.

2 They interface, sometimes, with the
3 anesthesiologist if there's a problem related to an
4 employee or a piece of material or supply. And then
5 they get other delegated duties depending on where --
6 the manager in their life. Sometimes we're trailing a
7 product, and they're responsible for helping with the
8 trial. Sometimes they will go help set up something
9 extra or be an extra arm.

10 Q. And how long -- is there currently a lead
11 anesthesia tech position?

12 A. It's vacant right now.

13 Q. But is there a position that hasn't been
14 eliminated?

15 A. That's correct. There is a position open.

16 Q. How long has that position existed?

17 A. This time it went into effect approximately
18 about 13, 14 months ago. Around January of '06 it went
19 into effect. It has a history. It's come in and out of
20 existence over a period of probably 10 or 15 years.

21 Q. But prior to sometime in the early '06, it did
22 not exist for some period of years?

23 A. Probably three years.

24 Q. Can the lead anesthesia tech make assignments
25 to the other anesthesia techs?

1 A. Yes, they can.

2 Q. Can they change their assignment? If they're
3 doing something, can they direct them to go do something
4 different?

5 A. That's correct.

6 Q. Can an anesthesia tech direct another
7 anesthesia tech to do something?

8 A. They can request it, but they can't demand it.

9 Q. And they can't divert -- do they have the
10 authority to divert -- does one anesthesia tech have the
11 authority to divert another anesthesia tech from what
12 they're doing?

13 A. No, they don't.

14 Q. Can an anesthesia tech -- and let's take one
15 who's not carrying the Spectralink phone. Can an
16 anesthesia tech who is not carrying the Spectralink
17 phone ever receive multiple requests from multiple
18 doctors or nurses for some equipment or some service
19 that they want them to provide?

20 A. Oh, that happens on an ongoing basis.

21 Q. And can they get those all at the same time or
22 close in time?

23 A. Yes, they do sometimes.

24 Q. Are they expected to make determinations among
25 those competing requests as to what they are going to do

PROCEEDINGS April 24, 2007

1 or not do or when they're going to do which?

2 A. Absolutely. We would expect them to
3 prioritize.

4 Q. And do you expect -- it is your expectation of
5 them that they'll exercise judgment in determining among
6 those competing requests what they're going to do?

7 A. Absolutely.

8 Q. Can the lead anesthesia tech authorize overtime
9 for other anesthesia techs?

10 A. Yes, they can.

11 Q. Can one anesthesia tech authorize overtime for
12 another anesthetic?

13 A. No, they cannot.

14 Q. I believe you had already said this, but does
15 the lead anesthesia tech -- when there was one up until
16 recently, did that person carry a Spectralink phone?

17 A. Yes, they did.

18 Q. Did they carry the same Spectralink phone that
19 other anesthesia techs carry?

20 A. No. They had one for the lead.

21 Q. Was it specifically to the lead?

22 A. That's correct.

23 Q. And if you know, what kind of calls does the
24 lead anesthesia tech get on that phone?

25 A. It can pretty much be anything. It can be

PROCEEDINGS April 24, 2007

1 requests for equipment, materials, supplies, a request
2 for anesthetic techs. It can be to complain about lack
3 of a tech, lack of equipment. It can be asked to talk
4 to the manager. If they think the manager is carrying
5 it because sometimes the manager carries it when the
6 lead is not there. It can anything.

7 Q. Does the manager typically carry a Spectralink
8 phone?

9 A. No.

10 Q. The various functions that you have described
11 for the lead anesthesia tech, prior to early 2006 when
12 the lead position was created, who was performing those
13 functions?

14 A. The manager.

15 Q. And if you know, since the lead anesthesia tech
16 position has become vacant, who is performing those
17 functions that you described for the lead?

18 A. The present manager.

19 Q. If you know, when the lead anesthesia tech was
20 not present because it was her day off or because it was
21 a different shift and she wasn't there 24/7, was the
22 lead Spectralink phone given to any other anesthesia
23 tech?

24 A. Not that I know of, but I couldn't 100 percent
25 say that one way or another, but I don't think so.

PROCEEDINGS April 24, 2007

1 Q. Do you know whether at some point in time, in
2 the past, anesthesia techs were receiving extra pay for
3 carrying the Spectralink phone?

4 A. Yes, they were.

5 Q. How did you come to know that?

6 A. One of my responsibilities in the department is
7 to mentor managers and to work with managers. And when
8 Alice was hired --

9 Q. Alice is who?

10 A. Alice was the manager previous to Diane.

11 Q. And for the record, what was her last name?

12 A. Beltran.

13 Q. Thank you.

14 A. It was my assignment to assist her in learning
15 her position and helping her along. And as we were
16 going through the process of learning about her position
17 and orienting, because I had done it with the previous
18 manager beforehand, when we got to budget and we were
19 talking about budget and how to check timecards, and
20 look at her budget it became apparent that there
21 appeared to be -- her budget was over budget.

22 And so we looked at how to investigate to find
23 out when you're over budget is it because you have
24 overtime or too many FTEs or whatever. We then
25 discovered at that time that staff was receiving RHC

PROCEEDINGS April 24, 2007

1 pay.

2 Q. And what is RHC pay?

3 A. Relief at higher classification.

4 Q. And you have some familiarity with relief in
5 higher classification pay?

6 A. Yes, I do.

7 Q. And how do you -- how do you happen to --

8 A. As a manager in multiple times in multiple
9 units -- and presently I actually have an employee in
10 RHC pay. I've used it with individuals who have gone
11 into acting positions or have been asked to take on
12 unusual job responsibilities for a period of time.

13 Q. And what is your understanding of when RHC pay
14 in the context of the SEIU Collective Bargaining
15 Agreement -- first of all, are you familiar with the
16 SEIU Collective Bargaining Agreement?

17 A. Yes, I am.

18 Q. And what is your understanding of when RHC pay
19 is to be paid under that agreement?

20 MR. HARRINGTON: Object; irrelevant.

21 MR. ARNOLD: I think the relevance is pretty
22 clear.

23 THE ARBITRATOR: You didn't write this
24 agreement, did you?

25 THE WITNESS: Absolutely not.

PROCEEDINGS April 24, 2007

1 THE ARBITRATOR: Okay.

2 MR. HARRINGTON: It hasn't been established
3 that she participated in the bargaining of the agreement
4 or anything that might -- her testi -- her, quote,
5 understanding of it relevant -- no, so it's irrelevant.

6 MR. ARNOLD: I think it goes to the weight, but
7 I think -- she said she's utilized it. She's utilizing
8 it now. And I think she can give what her understanding
9 of it is. It's ultimately for you to determine whether
10 it applies in this case.

11 THE ARBITRATOR: That's always a tough one.
12 Why don't you go ahead. Allowing broad latitude to both
13 sides, can you answer that question or would like to
14 have it read back?

15 THE WITNESS: Think I can.

16 THE ARBITRATOR: Okay.

17 THE WITNESS: To my understanding, there's two
18 ways in which an ASC member can get RHC pay. One is
19 when they are appointed into an acting position for a
20 position that is above their present level, such as an
21 anesthesia tech who goes into a empty lead position.
22 The lead position is above the anesthesia tech position,
23 and when they assume that position, they would get RHC
24 pay.

25 Another situation would be if someone is asked

PROCEEDINGS April 24, 2007

1 to do a job for a period of time that is significantly
2 different than the present job that they are doing. And
3 they -- and they're -- and that job is in the higher
4 level classification, and then could get RHC pay for
5 that.

6 BY MR. ARNOLD:

7 Q. So is it your understanding that there has to
8 be an actual other position in a higher classification
9 in order to receive relief at higher classification?

10 A. It has to be a real position that they would be
11 going into.

12 Q. So you discovered that employees were paid RHC
13 in the department; is that correct?

14 A. That's correct.

15 Q. And upon that discovery, what, if anything, did
16 you do?

17 A. Well, we tried to investigate it by pulling
18 some pay records to figure out why they were getting RHC
19 pay. And when it appeared that they were getting to be
20 in an acting lead position that didn't exist, we called
21 human resources.

22 Q. And what were you advised by human resources?

23 A. That we could not be paying that because you
24 can't pay RHC in a position that doesn't exist.

25 Q. And do you know, was the RHCP -- RHC pay

1 subsequently discontinued?

2 A. Yes, it was.

3 Q. Forgetting for a moment that there was not a
4 lead position in existence prior to early 2006, based
5 upon your interaction and dealings in -- with respect to
6 the anesthesia department and your observations of the
7 way it was operating, were the anesthesia techs who were
8 carrying the Spectralink phone performing other
9 functions -- the other lead fundamentals that you've
10 described with respect to the lead anesthesia tech?

11 A. Absolutely not.

12 Q. Were they authorizing overtime?

13 A. No, they were not.

14 Q. Were they giving assignments and changing the
15 assignments of other anesthesia techs?

16 A. No, they were not.

17 Q. Were you coaching or counseling other
18 anesthesia techs?

19 A. No.

20 Q. Is there -- have you done all of the job
21 descriptions that relate to the anesthesia department?

22 A. Yes, I have.

23 Q. Based upon the fact that you've prepared all
24 those job descriptions, is there, to your knowledge, any
25 job description for a higher paying classification that

PROCEEDINGS April 24, 2007

1 calls for the person to function as an anesthesia tech,
2 but in addition, carry a Spectralink phone?

3 A. No.

4 Q. Are you familiar with the ambulatory surgical
5 center?

6 A. Yes, I am.

7 Q. And I think you testified already there's a
8 Spectralink phone that's assigned to the tech working in
9 the ambulatory surgical center?

10 A. That's correct.

11 Q. How many OR suites are there in the ambulatory
12 surgical center?

13 A. There's 12 ORs and 2 treatment rooms.

14 Q. And compared to the main OR, if you can make a
15 comparison, in terms of number of procedures performed
16 on a typical day, are more performed on the day shift in
17 the main OR or are more performed in the ambulatory
18 surgical center?

19 A. It depends on the day. That's not a clear
20 answer. Sometimes we do the equal amount of surgeries
21 on days in ambulatory as we do in the main OR.
22 Sometimes we actually do more in ambulatory 'cause they
23 have a lot of turnovers and the main OR has longer
24 cases.

25 Q. Does the fact that there's a long case going on

1 in the main OR -- going on in the main OR, necessarily
2 mean that the anesthesia tech has more work to do with
3 respect to the long case?

4 A. No. Sometimes -- actually, it's nice to have
5 long cases because they actually have less work.

6 MR. ARNOLD: Off record just a moment, please.

7 THE ARBITRATOR: Okay. Sure.

8 (Brief pause in proceedings.)

9 MR. ARNOLD: I have no further questions on
10 direct.

11 THE ARBITRATOR: Okay. He may have some
12 questions.

13 MR. HARRINGTON: You haven't been a true Red
14 Sox fan until you had to attend games with Don Button
15 playing shortstop. People like Frank Melzone on third
16 base as I did?

17 THE ARBITRATOR: Are you testifying or asking
18 questions?

19 MR. HARRINGTON: Yes, I'm testifying. That's
20 the truth.

21 THE WITNESS: It's a great stadium.

22 CROSS EXAMINATION BY MR. HARRINGTON

23 BY MR. HARRINGTON:

24 Q. So I have a few questions for you about your
25 testimony as well. My name is Vince Harrington. I'm

PROCEEDINGS April 24, 2007

1 representing the Union in the case.

2 So you said that there was a time when you were
3 assisting the manager in learning her position, and I'm
4 not sure what time that was. Can you tell us when that
5 was that you provided that assistance?

6 A. From the beginning of the time she was assigned
7 till she left.

8 Q. And when did she begin the assignment as you
9 recall it?

10 A. You know, I was trying to think of that. I
11 want to say -- let's see. . . This is '07. Maybe
12 January of '05. I don't think it was '04. I think it
13 was '05. She was in the job like two years.

14 Q. And was Alice Beltran?

15 A. That's correct.

16 Q. And at some point in this process of mentoring
17 her and assisting her in learning about her position,
18 you became aware of the payment which is described as
19 RHC being made to some employees in the unit?

20 A. That's correct.

21 Q. Can you tell us when you became aware of that?

22 A. I can't tell you that.

23 Q. Okay. Can you tell us how you became aware of
24 it?

25 A. When we were looking at the budget. We were --

1 we were going through analyzing budgets and you -- how
2 do you know when you're over. They hold us to a pretty
3 tight ring on our budgets. And showing a manager on how
4 you can understand your FTEs. How do you stand on
5 people on overtime. How do you read overtime.

6 We were discussing when you grant it, when you
7 don't grant it. We were looking at timecards, how to
8 sign off timecards. Those kinds of things; and that's
9 when it came about.

10 Q. And is it true that at some point in your
11 investigation of this matter, you looked at actual
12 timecards which had been filled out by techs in the
13 units?

14 A. No. We actually went to the schedule
15 coordinator. Her name was Jean Schwehr -- S-C-H-W-E-H-R
16 -- and we asked her -- you know, as we were looking at
17 that about RHC pay, and she was able to pull it up on a
18 computer.

19 Q. I see. And you understood RHC pay is a type of
20 code in essence that's used to authorize this
21 differential for the performance of certain work?

22 A. Correct.

23 Q. And did you see that, indeed, the RHC pay had
24 been authorized and paid over some period of time?

25 A. That's correct.

PROCEEDINGS April 24, 2007

1 Q. Do you know how long it had been authorized and
2 paid before you, quote, "discovered it," unquote?

3 A. No.

4 Q. Do you know whether or not the timecards of
5 these employees were subject to supervisory review prior
6 to being submitted for payroll purposes?

7 A. Yes.

8 Q. And do you understand that some supervisor
9 reviewed and signed off on these timecards?

10 A. That's correct.

11 Q. And was that Ms. Beltran?

12 A. No.

13 Q. Who was it?

14 A. Robert Powell.

15 Q. And was Mr. Powell the predecessor of
16 Ms. Beltran?

17 A. That's correct.

18 Q. And how long had Mr. Powell been the manager,
19 if you know?

20 A. Maybe four or five years.

21 Q. Okay.

22 A. Maybe less.

23 Q. Okay. So in the range of four to five years is
24 your best knowledge?

25 A. Three, four, five. Somewhere around there.

PROCEEDINGS April 24, 2007

1 Q. Okay. And did you look at RHC -- strike that.
2 Did you observe that there was RHC approved by
3 Mr. Powell during his position as manager?

4 A. Yes.

5 Q. Did you actually make an investigation as to
6 how far back he had been approving that time?

7 A. No.

8 Q. Did you understand that that practice had been
9 continued under Ms. Beltran's managership, if you will?

10 A. Correct. Till she realized that.

11 Q. In your testimony you said that as you had, as
12 I understand it, as manager yourself authorized RHC, it
13 was for work in a higher level classification?

14 A. That's correct.

15 Q. And you also said under where the person has,
16 quote, "unusual job responsibilities," unquote. I made
17 that note.

18 A. Correct.

19 Q. What do you mean by that?

20 A. An example in one of my previous manager jobs
21 is I had an individual who was a orderly transporting
22 patients, et cetera. We had an opportunity of an
23 individual who was in a higher classification. They
24 were a clerk who was going to be out for a period of
25 time, and that person wanted to try that opportunity.

PROCEEDINGS April 24, 2007

1 And so they were temporarily moved into that position.
2 And since the majority of their time was spent doing
3 that versus orderly work, they were granted RHC pay.

4 Q. And is that a third category of the -- is that
5 a different category from the work in the higher class
6 as you understand it?

7 A. No. That's the work in the higher class.

8 Q. So why did you separate it out as the situation
9 of involving unusual job responsibilities when you
10 testified?

11 A. Because that was wasn't his typical job. So
12 his typical job was orderly, he was put into a different
13 job category. The majority of his time was working in a
14 different job, so therefore, he deserved the pay for
15 that.

16 Q. So he wasn't performing all of the duties of
17 the other job of the clerk, and he wasn't performing it
18 all of the time; he was doing a mix of duties?

19 A. No. He was performing all the job of the
20 higher category during the time he was doing that
21 instead of performing the job of the orderly, but he
22 would once in a while transport while he was doing the
23 clerk job.

24 Q. So while most of his time was spent as a clerk,
25 it was all of his time?

PROCEEDINGS April 24, 2007

1 A. I would say it would have been 90 percent to 95
2 percent of his job.

3 Q. Do you know when the Spectra phone was actually
4 introduced for use in the main OR?

5 A. No. Like I said, somewhere around two or three
6 years ago.

7 Q. And do you know whether prior to that time,
8 there was any assignment of a pager that was used in the
9 main OR?

10 A. Yes, we had pagers.

11 Q. And do you know whether there was any
12 particular assignment of an individual with pager
13 responsibilities in the main OR prior to the Spectralink
14 phone?

15 A. Yes.

16 Q. Do you know whether those persons got paid a 5
17 percent differential?

18 A. Not to my knowledge.

19 Q. Was Mr. Powell the manager of the department
20 when the Spectralink phones were introduced?

21 A. Yes.

22 Q. Now, I think your testimony was that sometime
23 in the early part of 2006, a lead person was hired -- a
24 lead tech was hired in the anesthetic department?

25 A. That's correct.

PROCEEDINGS April 24, 2007

1 Q. All right. But that wasn't the first time
2 there had been a lead position in the department?

3 A. That's correct.

4 Q. The job description that we have here
5 indicates, as I understand it -- you take a look at the
6 position description. I think it's in Employer Exhibit
7 3.

8 Do you have that?

9 A. Yes, I do.

10 Q. All right. Take a look at the second page. Am
11 I correct that these notes at the bottom where it says
12 dates revised indicate various revisions to an existing
13 lead tech position description?

14 A. Correct.

15 Q. All right. The last one having occurred in
16 March of 2006?

17 A. Correct. And we have another out now for '07.

18 Q. Okay. So does this -- these identified --
19 revisions dates indicate that throughout the periods of
20 time covered, there was, in fact, a classification
21 called lead tech?

22 A. No, it does not.

23 Q. What does it mean then?

24 A. What happened was there was a period of time
25 that they dropped the lead technician and we had the

1 archived job description; and when I was responsible for
2 revising them for the department, I asked my boss if she
3 wanted me to revise it and keep it in archives 'cause it
4 was always goal of, hopefully, getting it back. And so
5 she had me to do that. 'Cause a lot of the revisions
6 relate to requirements of the Joint Commission of the
7 state, so we kept it consistent.

8 Q. So are you saying that the document existed,
9 but there was no person in the classification?

10 A. The document existed in the file drawer.

11 Q. You were not part of the requested bargaining
12 that occurred with result -- team that resulted in the
13 January 2006 agreement, were you?

14 A. Could you rephrase that?

15 Q. Yeah. Were you on the management bargaining
16 team that bargained the 2006 to 2008 contract?

17 A. No.

18 Q. Were you involved on the management bargaining
19 team which bargained the predecessor contract?

20 A. No.

21 Q. Have you ever been involved in the collective
22 bargaining with SEIU as a member of the team?

23 A. No.

24 Q. Who did you speak with in HR when you called
25 about your discovery of this RHC pay being -- or RHC pay

PROCEEDINGS April 24, 2007

1 being paid?

2 A. I did not speak -- I directed Alice to do it.

3 Q. Did she ever report to you with whom she had
4 spoken?

5 A. I remember Brian. She spoke with Brian. I
6 don't know if she spoke with May Sun Young -- S-U-N,
7 Y-U-N-G.

8 Q. Y-O-U-N-G.

9 A. Y-O-U-N-G.

10 Q. Okay. And is that somebody that you had some
11 understanding in HR was -- would respond to questions of
12 this kind for management?

13 A. That's correct.

14 Q. Okay. And you don't know what was said either
15 by Alice or by the responder in HR, do you?

16 A. Only what Alice relayed back to me.

17 Q. Do you know what question Alice asked?

18 A. Yes.

19 Q. And how do you know that?

20 A. Because when we talked, she wrote it down on a
21 pad of paper so that she'd make sure she asked the
22 correct question.

23 Q. Had Alice, herself, been approving timecards
24 for this pay; do you know?

25 A. I don't know that.

PROCEEDINGS April 24, 2007

1 Q. Do you know what level in the organization
2 approval is given to payroll to authorize payment?

3 A. The supervising manager.

4 Q. And would be that Ms. Beltran?

5 A. That have been Ms. Beltran.

6 Q. Okay. And prior to her, it would have been
7 Mr. Powell?

8 A. That's correct.

9 Q. And is it someone, if you know, in payroll who
10 is responsible to review timecards to make sure that
11 they -- the pay is consistent with the Collective
12 Bargaining Agreement?

13 A. That, I don't know.

14 Q. Why would the carrying of the Spectra cell
15 phone -- Spectra phone in the main OR ever result in an
16 employee having less work to do?

17 A. It just depends on who calls or who flags you
18 down or which department you're working in or what the
19 volume is.

20 Q. Well, I limited my question to carrying the
21 Spectralink phone in the main OR.

22 A. All the above for the same reason.

23 Q. Well, prior witnesses have testified that when
24 you carry the phone on the average, you get 40 to 50
25 calls per day on that phone by itself. Would you

1 disagree with that?

2 A. I can't address that. I don't carry the phone.

3 Q. Have you ever carried the phone?

4 A. Not the anesthesia Spectralink phone.

5 Q. Do you have an understanding of whether on the
6 day that an individual -- or during the timeframe that
7 individual has that phone in the main OR, they're also
8 given the usual range of assignments for that day in
9 that unit?

10 A. Yes, they are.

11 Q. So they're expected to respond to the calls on
12 the Spectralink phone as well as do the range of usual
13 assignments in the unit?

14 A. That's correct.

15 Q. Were you involved at all in the decision of
16 implementing the Spectra phone in the main OR?

17 A. I was on the management team that discussed it.

18 Q. And why was it implemented in the main OR?

19 A. It was a way to ease the work of the employees.
20 We had a lot of complaints from employees that they were
21 constantly running looking for a telephone or we had a
22 habit of people ripping phones off the wall; so they
23 would go somewhere, and there was no phone and it was
24 frustrating for them.

25 We had complaints from anesthesiologists who

PROCEEDINGS April 24, 2007

1 said that the staff -- it was not only anesthesia, but
2 other departments were not responding in a timely
3 manner; and their job requires that we be available to
4 them at all times.

5 Q. So it was for a combination those reasons that
6 this phone was implemented?

7 A. That's correct. New technology.

8 Q. And also an immediate respond, if you will,
9 rather than waiting for someone to get the page, read
10 the page, find a phone, et cetera?

11 A. Correct.

12 Q. All right. And would it be fair to say that
13 the impetus for the more instant communication, came
14 from the medical practitioners?

15 A. No. Also from the staff who were very
16 frustrated feeling like they were wasting a lot of their
17 time running around looking for a phone, and that was
18 frustrating the staff also.

19 MR. HARRINGTON: Nothing else.

20 REDIRECT EXAMINATION BY MR. ARNOLD

21 BY MR. ARNOLD:

22 Q. If you know, did Ms. Beltran -- was she already
23 employed at Stanford when she became manager of
24 anesthesia?

25 A. Yes, she was.

PROCEEDINGS April 24, 2007

1 Q. What was she employed -- what was her prior
2 job?

3 A. At the time that she made the role transition,
4 she was a perioperative charge coordinator for
5 anesthesia.

6 Q. And that's a nonmanagement position?

7 A. Nonexempt, nonmanagement.

8 Q. That was her first time in a management role?

9 A. Yes, it was.

10 Q. Was she -- did the predecessor leave -- did the
11 predecessor resign?

12 A. No, he did not.

13 Q. So was there a transition period where she got
14 to learn from the predecessor how the department ran?

15 A. No. It was a quick leaving.

16 Q. And are you familiar with the perioperative
17 charge coordinator?

18 A. Yes.

19 Q. Does that position have any supervisory
20 functions?

21 A. No.

22 Q. Does it have any payroll oversight functions?

23 A. Not at all.

24 Q. Is it a position covered by the Collective
25 Bargaining Agreement with SEIU?

1 A. No, it's not. It's nonexempt.

2 MR. ARNOLD: No further questions.

3 RECROSS EXAMINATION BY MR. HARRINGTON

4 BY MR. HARRINGTON:

5 Q. Just for -- more out of curiosity I suppose
6 than anything else. What does the term "perioperative"
7 describe?

8 A. It just means pertaining to the operative
9 region. It's a broad term.

10 MR. HARRINGTON: Okay. All right. That's all
11 I have --

12 Does it include, for instance, pre-op, PACU,
13 OR, roll 'em in, roll 'em out?

14 THE WITNESS: It's the entire spectrum of
15 individuals who might experience the operative
16 experience from the pre-op clinic through the recovery
17 room and out the door.

18 MR. HARRINGTON: Okay.

19 THE ARBITRATOR: Okay. I think that's it.
20 Thank you, Ms. Michelson.

21 MR. ARNOLD: Off the record for a moment.

22 THE ARBITRATOR: Sure.

23 MR. ARNOLD: Whatever, a couple minutes,
24 please.

25 THE ARBITRATOR: Sure.

PROCEEDINGS April 24, 2007

1 (Recess.)

2 MR. ARNOLD: So the Employer rests.

3 THE ARBITRATOR: The Employer rests. Okay.

4 Any rebuttal, Mr. Harrington.

5 MR. HARRINGTON: Let me consult. I don't think
6 so, but let's take a moment and talk about that.

7 THE ARBITRATOR: Okay.

8 (Discussion off the record.)

9 MR. HARRINGTON: We have no rebuttal.

10 THE ARBITRATOR: So I think we're at that point
11 in the hearing where both sides have had opportunities
12 to present all of their witnesses and documentary
13 evidence, and so we need to address how we're going to
14 wind it up, written briefs, oral argument.

15 Your firm oftentimes likes to do oral
16 arguments. I know you've done that before,
17 Mr. Harrington --

18 MR. HARRINGTON: Right.

19 THE ARBITRATOR: -- so what's your preference?

20 MR. HARRINGTON: I think in this particular
21 case 'cause we have some other contract provisions, I
22 would like to submit an oral -- I mean, rather, a
23 written argument.

24 THE ARBITRATOR: Okay. And I think you
25 typically do that, don't you --

1 MR. ARNOLD: Yes, correct.

2 THE ARBITRATOR: -- Mr Arnold?

3 So what kind of timeframe would you like to put
4 on this, 30 days receipt of transcript, something like
5 that?

6 MR. HARRINGTON: That's fine.

7 MR. ARNOLD: With proviso that either one of us
8 can call the other to see if an extension will be
9 granted if needed?

10 THE ARBITRATOR: Oh, yeah. I mean --

11 MR. HARRINGTON: That's fine.

12 THE ARBITRATOR: -- it's not a problem for me.
13 You can have an extension as long as you agree to it or
14 even if you don't.

15 MR. HARRINGTON: I mean, the usual rule is you
16 talk to the other side and see if you can reach
17 agreement. If not, we'll come to you, and you can
18 decide it but we usually reach an agreement.

19 MR. ARNOLD: And we'll submit the briefs to you
20 with a -- with one postage paid addressed to the other
21 side and then you'll script me upon receipts of those
22 briefs.

23 THE ARBITRATOR: If that's your preference.

24 MR. HARRINGTON: Right. And we'll serve
25 through you, basically.

1 THE ARBITRATOR: Exchange briefs through me
2 them with the self-addressed stamped envelope rather
3 than doing simultaneous exchange.

4 Okay. Well, I'd like to thank everybody for
5 your participation. Nice to meet all of you. Special
6 thanks to counsel who did such a nice job in presenting
7 the case.

8 My decision, by the way, would be due 30 days
9 from the receipt of post-hearing briefs. I want to put
10 a timeframe on that.

11 MR. ARNOLD: All right.

12 MR. HARRINGTON: Thank you.

13 (Time: 4:16 p.m.)
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I, JANE STULLER, hereby certify that I am a
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and place therein stated; that the foregoing pages
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5/7/07


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PROCEEDINGS April 24, 2007

A				
abandoned 112:2	155:24	113:7 117:10	167:11,15,19,22	approached 44:18
ability 11:5 29:16,18	Administrative 92:22	119:20 121:25	168:2 170:21,22	appropriate 13:7
29:19 46:13 78:6	administrator 155:19	122:7 128:1 136:21	172:6,7,10,15,18,21	appropriately 96:5
able 31:9 56:23 79:21	155:21	anesthesia 1:9 2:9 5:5	173:1 174:2 185:4	approval 184:2
94:5 100:20 117:13	admissible 76:4,24	5:6,11 6:7 8:2,7,21	186:1,24 187:5	approved 178:2
148:22 176:17	admission 94:24	9:12 14:25 15:6,22	anesthesia-tech 48:5	approving 146:1
absence 11:20 76:9	102:21 111:11	15:23 16:7,8,21	48:17	178:6 183:23
Absolutely 166:2,7	123:13 125:12	17:4 22:12,13 23:13	anesthesiologist 10:9	approximate 17:7
169:25 172:11	admitting 155:13	24:6 26:13,18 30:7	18:25 20:9 44:20	approximately 17:14
accept 95:17 104:24	advent 9:3	34:14,16,20 35:22	100:2 131:21 163:1	17:17,20 33:19,20
111:15 123:18	advised 50:24 171:22	37:10 41:3,4,11,17	164:3	58:7 59:20 68:20,21
125:15	afternoon 4:12 17:3	42:15,16,17,23	anesthesiologists	78:23 80:15 82:10
accesses 119:7	31:23 32:1 92:1	43:21 44:3,18 45:11	63:15 141:8 144:18	87:12 114:21,22
accomplish 10:18	age 23:17	45:14,25 47:11,14	157:4 185:25	115:1,4 129:10,19
11:1,1 151:18	ago 68:24 103:4	47:19 48:7 52:8	anesthetic 15:8 43:4	130:10,11,24 146:6
accurately 158:12	164:18 180:6	54:16 57:25 58:16	54:14 56:24 62:14	147:14 155:22
acquire 131:16	agree 7:17 138:10	58:17 59:14 63:23	93:20 96:12 97:10	164:17
153:12	190:13	65:6,21 68:7,8	108:22 113:9,22	April 1:17 2:18 4:22
act 155:18	agreement 4:18	71:15,22 72:24	122:1 136:19	7:5 59:11,22 60:14
acted 156:5	169:15,16,19,24	78:14 81:23 92:22	137:13 140:10	68:21 80:10 92:2
acting 135:2 169:11	170:3 182:13	93:2,6,7,9,13,16,23	144:23 156:16	arbitration 1:1 2:1
170:19 171:20	184:12 187:25	93:24 94:1,22 96:2	158:3 159:11	6:5 83:23 126:22
action 12:17	190:17,18	96:4,23 97:9 98:5	166:12 167:2	arbitrations 76:24
activate 100:2	ahead 170:12	98:17,18,20,24 99:5	180:24	arbitrator 1:2 2:2 3:3
activity 30:18 142:12	ahold 37:21 79:22	99:7,9,10,16,17,20	angiograph 37:20	6:4,18 7:13,17 8:11
actual 13:6 24:6 51:5	97:8 98:9 99:24	99:22,25 100:3,4,21	answer 14:8 24:7	12:20,24 13:8,11
75:1 99:25 144:25	100:21 102:9	101:3,5,6,12,16	26:14 35:18 38:9,10	33:12,15 38:11
171:8 176:11	105:14 140:11	102:10,12,15	38:20 41:19 50:21	48:21 57:19,21 58:4
acute 9:15	airflow 154:19	103:16,22 104:8	62:8 63:20 66:22	58:22 73:22,25
add 6:15 103:21	aisle 19:4,5	105:18,19 107:15	81:4 84:23,25	75:11 76:7,25 77:3
added 23:16 70:9	Alameda 3:10 6:14	107:21,25 108:22	100:23 108:10	81:5 85:8,17 88:16
103:11,12,13	Alejandro 4:6,9 92:6	108:25 109:6,22,24	145:18 148:22	90:19,22 91:3 92:3
139:15	92:13 94:15 101:24	110:6 111:6,9,20	149:2 154:20	94:9,11 95:3,17
addition 22:24 54:8	110:25 126:20	112:15,19 113:1,3,4	161:12 163:8	97:16,20,22 101:18
57:2 62:12 78:10	148:10 154:2	113:5 114:8,10,11	170:13 173:20	101:20 102:24
99:18,19 101:5	Alice 79:6,9 93:5	114:13,23 116:16	answered 57:7	104:1,12,16,24
103:21 132:20	127:6 168:8,9,10	117:5,7 119:21,22	121:25 145:13	105:13,17 106:17
134:5 151:2 173:2	175:14 183:2,15,16	119:24,25 120:7,10	158:23	106:23 110:9,16,21
additional 8:8 10:25	183:17,23	120:12,18,22,24	answering 29:3 46:13	111:15 118:7 119:1
23:2 24:10 31:24	allotted 150:23	121:2,3,4,7,9,10,12	answers 43:8 100:22	123:14,17 125:15
68:3,10,15 96:5,20	Allowing 170:12	121:16,20,23 122:4	anticipation 83:22	126:10,13,15
109:2 130:16 141:3	alongside 114:4	122:4 125:21 126:1	anymore 12:4	152:20 153:5 154:1
141:9 142:14	Alto 1:16 2:17	126:4,6,6 127:2	anyway 75:15	154:5,8 157:14
additions 51:5	ambiguous 47:3	128:13 134:2,5	Anywheres 31:13	169:23 170:1,11,16
address 10:6 185:2	ambulatory 34:18	136:21 138:24	apart 18:10 116:6	174:7,11,17 188:19
189:13	35:18,19 47:1,6	139:12,23 140:22	apparent 168:20	188:22,25 189:3,7
addressed 121:22,24	52:17 72:7,19 97:15	141:12 143:17	apparently 9:19,23	189:10,19,24 190:2
190:20	99:10,11,17,20	148:11,12 151:17	78:23 146:25	190:10,12,23 191:1
addressing 78:12	115:13,21 116:7,12	152:11 155:16	appear 19:18	archived 182:1
add-on 23:15 43:5	150:4,12 173:4,9,11	156:1,6,23 157:1,6	appeared 168:21	archives 182:3
50:24	173:17,21,22	158:13,21 159:2,7	171:19	area 9:18 44:1 52:7
add-ons 23:6 24:9	amended 95:13	159:20 160:22,25	appears 7:4 72:20	96:23 103:12,17
29:7 86:21 137:4	amount 82:13 140:23	163:14,16 164:11	application 12:12	114:25 116:18,20
administration	143:25,25 173:20	164:24,25 165:6,7	applies 46:25 170:10	117:3 122:1 133:9
	analyzing 176:1	165:10,11,14,16	appointed 170:19	134:24 140:12
	and/or 11:5,5 21:3	166:8,9,11,15,19,24	approach 66:19	156:2 159:17

PROCEEDINGS April 24, 2007

areas 26:22,23 36:23 37:1 68:9 71:1 145:3 argue 85:1 argument 189:14,23 arguments 189:16 arm 164:9 Arnold 3:14 6:11,15 7:16 8:6 13:8,10 17:15 33:11,14,16 33:17 38:5,12 47:4 49:1 51:23 52:1 56:17,18 57:17 58:5 58:20 73:20,23 74:14,22 75:3,9,15 76:3,5,11,19,22 77:2,5,14 83:13,14 83:25 84:7 85:3,7 85:12,18 88:14,18 90:10,18,24 91:1 92:9,10 94:10,14,24 95:21,22 97:23 101:19,23 102:21 104:2,3,23 105:3,22 106:15,21,24 110:13,19,24 111:11,19 118:5,10 118:24 119:3 121:15 123:12,15 123:24 125:12,19 126:9 127:7 148:8,9 150:15 151:13,14 152:25 153:3,25 154:6,13,14 157:18 157:22 169:21 170:6 171:6 174:6,9 186:20,21 188:2,21 188:23 189:2 190:1 190:2,7,19 191:11 arranging 113:15 array 19:16 arrive 20:5 22:22 arrives 69:13 article 8:1,8 12:13 83:23,25 ASC 35:23,25 36:3,12 36:14 52:17,18,21 52:23 53:2,4,15 71:1 72:7,14,17 87:11,13,19 88:3,6 88:8 102:12,18 103:15,21 139:23 140:1,10,16 141:25 150:3,3 160:4 170:18 Ashford 4:4 13:15,17	13:24 19:1 33:18 52:4 56:19 58:6,23 63:22 aside 16:5 71:16 80:4 117:7 138:2 140:10 asked 32:25 33:4 109:7 131:18 136:16 137:6,7 150:3 156:10 167:3 169:11 170:25 176:16 182:2 183:17,21 asking 25:7,11 29:4 35:24 38:6 76:19 84:14 86:12 114:4,9 135:11 138:10 152:18 174:17 assemble 15:16 assessment 107:18 assign 46:18,19 120:24 125:25 126:5 assigned 8:3,22 9:25 10:17 11:2 18:24,25 19:4,4,5 24:20 25:17,21,24 26:22 30:19 35:3,23 36:21 36:22 38:16 44:7,8 60:15 73:2 105:18 106:12 115:23 121:4 123:2,5 127:14 128:24 132:24 133:1,2,19 133:21 134:8 138:14 141:20,23 146:7,9,12 148:12 148:25 150:22 151:3,5,11 173:8 175:6 assigning 109:20 163:21 assignment 11:22 12:5,16 18:8,11 19:18,19 20:1,16,23 22:24 25:20 26:4,6 27:4,19 28:23 32:22 34:23,24 36:20 37:4 37:24 38:1,3,7,13 38:14,17,19 39:1 42:6,8,13 47:7,10 49:4,13 53:15 55:9 60:3 61:2,13,15,19 61:21 68:12,23 69:12,15,18 73:15 73:18 82:1,6,6,7,19 83:1,7 87:6 88:20	88:21,25 89:3,5 109:11 113:9 116:8 116:16,21 117:1,9 128:16,20,21,22 129:2,9,20 130:3 132:15,15 133:23 134:7 135:13 136:8 137:10,11 138:1,3 148:4,15 149:1,24 150:18 152:10 165:2 168:14 175:8 180:8,12 assignments 10:16 11:7 17:20,24 19:17 35:22 36:15,17 39:2 39:6 44:7,12 46:10 68:25 69:21 71:5 101:15 109:12 116:8 132:18 148:11 152:11 153:14 164:24 172:14,15 185:8,13 assist 10:9 65:5 113:3 113:4,19,22 114:2 127:23 128:1 133:23 149:21 163:18 168:14 assistance 11:6 64:20 66:6,10,17 107:13 109:13 121:23,25 130:17 145:3 157:3 159:4,7 175:5 assisting 175:3,17 associated 12:12,18 18:7 25:25 28:17 58:1 62:4 63:5 70:2 81:13 133:16 156:20 assume 20:21 48:5 90:8 137:21 170:23 assumed 128:6 147:4 assuming 92:25 147:11 assure 96:4 assuring 137:23 ATs 105:14 attached 54:3 attend 174:14 attention 100:4 attorneys 152:21 audible 14:8 99:19 144:13 audit 5:11 138:24 authority 109:2,18 119:25 120:6 165:10,11	authorize 117:11 166:8,11 176:20 184:2 authorized 176:24 177:1 178:12 authorizing 172:12 available 42:3,6,9,16 66:16 108:23 127:21 136:11,17 186:3 average 22:1 87:12 108:1 184:24 aware 17:4 22:20 23:14 26:3 31:17 32:10,17,20 56:10 59:23 60:2 61:11 69:6 72:23 80:21 124:25 175:18,21 175:23 A-L-E-J-A-N-D-R-O 92:14 a.m 2:18 17:19	137:23 149:1,17 190:25 basis 9:21,23 16:18 19:1 25:22 27:11 60:21 69:9,10,11 88:7 101:17 115:24 116:1 122:21 123:4 123:5 124:12,18 128:24,25 129:14 139:8 165:20 beat 153:7 becoming 93:3,15 125:20,24 153:13 155:9 Bee 3:4 beep 122:7 beeped 142:20 beeper 122:8 beepers 103:16,22 106:2 139:23 140:6 140:13,16 Beg 66:21 began 45:22 beginning 8:4 175:6 behalf 9:12 believe 8:19 25:3 27:7 27:17 35:3 105:7,10 105:11 120:17 128:7 138:18 159:3 166:14 bells 99:18,18,19 belt 142:19 162:1 Beltran 79:6,8 80:3,7 93:5 127:6 128:9 168:12 175:14 177:11,16 184:4,5 186:22 Beltran's 178:9 benefits 12:18 best 74:8 177:24 Betsy 146:4 better 70:17 binding 7:14 blades 96:14 blatant 76:19,21,22 bleeding 63:11 block 43:25 44:5 blood 64:25 65:1,2,3 blue 143:15 board 43:9 50:25 51:16,21 54:8 56:22 70:11,16 87:8 137:5 body 125:6,8 boss 182:2 bottom 102:12,18,18 157:21 181:11
---	---	---	--	---

PROCEEDINGS April 24, 2007

Boulevard 3:4	148:20 149:20	carry 8:3 9:25 22:9	136:24 144:2 145:5	137:5 144:12
break 91:1,3 108:4	150:1 155:19,21	22:13 24:21 30:15	150:11 170:10	178:22 186:10
breaks 113:7 163:20	159:10,11 161:21	33:4 37:17 45:25	173:25 174:3 175:1	chained 89:18
breathing 96:12	162:13 163:4,7,8	46:6 49:17 61:11,15	189:21 191:7	chance 24:6
Brian 183:5,5	190:8	99:7,9,11 105:4	cases 15:16 16:9	change 10:7 11:7
brief 88:10 174:8	called 9:24 43:25	106:5 107:14	21:14 31:19,20,24	12:8 28:25 29:16
briefly 15:5 16:4	45:2 63:23 119:4	120:25 121:16	37:1,16 48:16 51:4	42:6,7,12 43:6 46:9
156:25	122:13 143:4	122:8 128:17	51:12 65:23 70:7,8	46:15,20 47:7,10
briefs 189:14 190:19	145:17 161:13	129:21 146:18,22	70:8 71:14,17,19	54:17,17 56:21
190:22 191:1,9	171:20 181:21	147:11,16 149:8	72:14 86:24 93:23	57:10 67:24 80:17
bring 41:22	182:24	159:20 162:1	93:25 95:24 96:6,20	81:13 89:3,5 90:15
bringing 63:8 65:4	calling 52:12,13	166:16,18,19 167:7	96:21 128:3 134:16	109:7,11,12 113:9
161:22	65:19 66:9,12 75:6	173:2 184:24 185:2	135:2,5 141:2 150:7	125:6 165:2
brings 9:13	81:10 131:5	carrying 8:9 10:23	150:8,8,9 160:6	changed 9:7 78:9
broad 170:12 188:9	calls 10:21 23:1,4,5	12:19 22:10,11	173:24 174:5	80:6 81:15,20 82:2
brought 91:4	23:11 31:11,24 32:7	24:17,20 27:13	CAT 36:23 38:22	82:4,6 148:4
buddy 45:2 46:24	32:16 35:11 36:7,8	28:18 30:19 31:10	49:9 116:23	changes 23:7,13,24
budget 168:18,19,20	45:22 49:21 62:18	32:25 35:14 37:3,5	catch 81:5	24:1 54:7,21 67:11
168:21,21,23	62:22 63:1,2,4,7,12	41:8,10,18 42:4	category 179:4,5,13	67:15,21,23 70:7
175:25	63:18 64:12,15,17	43:11 45:5,8,13	179:20	81:19 86:10,21,21
budgets 176:1,3	65:10,17,19 66:7,18	47:1,6 49:19 53:24	cath 36:24 37:19,20	113:11 136:9,22,25
building 16:3 53:3	72:13 73:24 78:9,15	54:19 55:10 56:19	37:21 38:24 39:3	137:12
bulk 68:10	79:10,12,18 80:3,5	58:11 62:4,16 63:13	48:8,10,14 49:8	changing 172:14
bunch 65:16,18	80:8 90:14 107:3,5	65:8 66:5 67:9 74:5	116:23	charge 31:2,8 34:19
burden 8:13	108:1 117:10	74:13 78:2 80:22	cause 15:5 28:19 51:3	67:1 187:4,17
busy 41:25 42:18,22	121:12,19,21 130:8	81:14,17 82:2 86:2	52:14 76:19 129:16	check 35:15 40:15,22
42:24 44:25 46:14	130:12,17,24 131:8	106:10,11 107:1,20	131:4 137:16	157:17 168:19
149:15 161:14	131:12,24 132:14	108:8,17,25 109:1,5	173:22 182:3,5	checked 16:17
Button 174:14	134:3 136:18,19	122:10 132:20	189:21	checking 36:12 93:23
	147:15,19 149:2,3	133:17 138:3	causes 161:14	checklist 5:14 36:13
C	149:10,12,16,18,19	146:15 149:6,11,15	cell 20:14 63:10 64:23	39:24 117:20,24
C 3:1 6:1	149:25 162:5	150:18 151:1 161:8	64:24,25,25 65:7,10	118:17 133:3,14
cajole 11:6	166:23 173:1	161:10 162:3,3,20	65:11,14 89:18,20	chemotherapy 55:2
calculation 13:4	184:17,25 185:11	165:15,16 167:4	106:8 141:18	chief 13:12 92:4
31:10	canceled 70:8	168:3 172:8 184:14	184:14	choices 65:15
California 1:16 2:17	cancellation 29:7	184:20	cell-saver 94:3 96:24	chose 78:11
3:5,10,16 192:19	43:5 50:23 57:1	cart 5:14 16:15,17	center 9:14 35:19,19	circuit 96:13
call 13:14 16:16 24:5	cancellations 23:6	18:2,6,13 19:15	47:2,7 52:17 72:8	circuits 15:14 94:1
26:13 29:6 31:2	24:9 51:5 67:16	40:2,6,8,13,22,24	72:19 97:15 99:11	circulation 65:5
37:18 38:20 39:6,10	81:19 86:21	43:17,17,18,22,23	99:20 115:14,21	claim 57:23
39:10,18 41:9,14	cancels 137:4	44:1,5 54:25 55:1,6	116:7,13 150:5,12	clarification 54:24
43:4 47:23 49:6,11	cancer 53:3	55:7 93:24 122:18	173:5,9,12,18	clarify 57:22,23
49:24 50:3,18,22	capacity 59:10 75:14	122:18 125:4 133:2	central 133:10	class 82:20,23,24
53:8 54:14,18 55:3	77:21 126:24	133:14	certain 10:17,18 54:6	83:15,18 84:21
57:4 58:24 62:20,24	134:14 156:5	carts 18:15,16 43:16	96:20 129:23,24	179:5,7
63:14,20 64:18,21	care 9:15 90:3 157:4	43:21 44:5,6 94:2	141:6,7,8 176:21	classic 12:7
64:22 65:21 66:11	157:8	96:5	certainly 6:18 33:12	classification 9:17
68:3 78:9,15 80:6	Carlos 3:4	case 1:5 2:5 6:9 8:14	44:16 126:13 154:8	15:20 45:10 156:23
89:7 90:6 99:5,13	carried 9:2 19:23	11:3 13:12 15:17	154:8	163:13 169:3,5
99:13,15,21 100:9	27:7 30:12 35:5	18:22 21:10,11	CERTIFICATE	171:4,8,9 172:25
107:7 108:18,19	36:2,16 37:9 46:2	31:22 37:19 38:21	192:1	178:13,23 181:20
113:12,14 117:23	57:15,25 62:24 63:5	38:22,23,24 39:11	certified 93:2	182:9
122:5,6,7 131:19	105:23 142:20,24	39:13 51:13,13 55:6	certified 127:2	classifications 6:8
132:3,10 133:10,15	185:3	62:14 67:16 76:16	128:12 192:1,5,19	Classifications-FM...
136:21 144:22,22	carries 101:12 120:22	81:19 92:4 96:15	certify 192:4	1:10 2:10
144:24 145:5	160:7 167:5	100:22 125:3	cetera 11:8,13 86:22	classify 82:22

PROCEEDINGS April 24, 2007

cleaning 18:13	74:12,15 81:12,22	144:20 145:1,4,8,9	163:3 164:15 165:5	60:22 92:15 95:15
clear 71:20 75:3	99:1 100:16 137:24	145:16	166:22 171:13,14	101:4 106:1 118:21
142:19 169:22	140:7 162:23	contacting 20:10	173:10 175:15,20	140:5,8 154:24
173:19	186:13	52:14 161:20,22	176:22,25 177:10	164:10
clearly 144:13	communications 75:5	contacts 103:19	177:17 178:10,14	customary 8:12 31:12
clerk 178:24 179:17	compared 30:19 33:4	context 159:7 169:14	178:18 180:25	
179:23,24	56:1 71:9 82:18	continue 55:21	181:3,11,14,17	D
clerks 136:20	162:3 173:14	146:15 147:14	183:13,22 184:8	D 1:2 2:2 3:4 4:1 6:1
clinic 155:10 188:16	comparison 173:15	continued 5:1 139:16	185:14 186:7,11	daily 9:23 16:18 19:1
Clinics 1:4 2:4 5:8,10	compensation 8:25	139:19 178:9	190:1 192:9	39:1 69:9,15 82:6
5:13 6:5 14:20 34:5	9:5 27:13,16,19	continues 9:6	correctly 164:1	88:21,25 89:3
59:7 92:16,19	competing 165:25	continuing 80:4	corridor 44:25	106:12 122:21
154:25	166:6	contract 4:15,19,21	corridors 44:19	123:4,5 128:25
close 10:8 151:24	complain 167:2	6:22,25 7:2 8:1,8,18	162:25	129:14,14 163:18
165:22	complaint 122:3	12:2,9,14 24:16	counsel 6:18 54:6	date 12:16 16:17
coach 120:14	complaints 185:20,25	81:3,9,10 83:19,23	191:6	19:25 40:4 61:22
coaching 163:23	complete 10:15 87:3	84:1 182:16,19	counseling 172:17	81:12 95:6 130:1
172:17	87:5 192:8	189:21	count 22:1 133:10	145:22,23
code 83:4 138:14,15	completes 118:19	contracts 8:20	counterparts 77:22	dated 4:15,22,25 5:9
138:19 143:15	completing 118:22	control 23:5,12 24:5	counting 114:22	5:13 6:22 7:5,7
176:20	complex 64:17,21	24:8 29:6 43:4	couple 11:15 52:4	192:13
colleague 137:15	compliance 5:11	51:11 54:13,19	117:17 123:11	dates 40:11 181:12,19
colleagues 107:12	122:17 124:16	56:23 63:16 76:15	129:12 188:23	day 9:23 10:15 14:11
collection 65:1	138:24	conversation 14:11	course 10:22 74:16	17:1,2,5,13 19:8
collective 169:14,16	compliant 118:3	14:16	75:5 87:25 89:8,16	20:4,17,21 22:6,24
182:21 184:11	complied 7:12	convey 137:19	97:3 113:10 119:1	24:12 28:5 30:6,20
187:24	computer 176:18	coordinator 34:19	148:19 152:10,12	33:19 39:17 51:5
combination 186:5	ComTel 99:17	176:15 187:4,17	cover 42:1 116:19,22	56:12,20 57:9 60:3
come 10:5 15:12	concern 79:9,16	copy 84:2 157:14,15	127:23 134:9	60:16,17 61:2,10
20:22 21:6 23:15	concerned 78:3	cordless 97:18 159:15	156:10	62:17,20,22 69:19
44:14,15 48:18,19	concerning 10:4 13:5	corner 95:7	covered 181:20	69:20 73:3,4,13
70:22 72:13 113:16	23:1 77:9 81:19	correct 7:15,16 19:21	187:24	74:7 75:5,24 76:6
127:22 140:14	82:16 126:21	25:9 39:3,8,18,19	covering 36:23	77:9,23 78:14 87:13
164:19 168:5	concerns 77:22,24	39:22 42:6,21 43:1	coworkers 11:6 23:23	87:17,18,25 94:4
190:17	78:11,15	43:6 44:21 46:10	23:25 28:20 29:13	107:21,22,25 113:8
comes 19:6 23:11	Conciliation 6:9	47:15 49:24 50:8,13	64:14,16,20 66:11	113:10 114:14,19
51:17 57:4 148:19	concluded 12:10	56:22 57:11 73:16	66:17,19 67:21,22	114:19,21,23 115:8
comfortable 127:11	conclusion 12:25 28:5	89:12,15 100:8,11	75:24 77:9,12 78:3	121:6 122:23,25
coming 28:20 39:13	conclusory 77:16	100:13 101:1,10,13	78:8 82:18 86:17	123:2,6,6,10 124:14
63:9 79:15 86:24	condition 124:22	102:7,20 104:15	craniotomies 134:22	127:14,17 130:12
130:18 137:20	conditions 9:18	106:9 112:10	craniotomy 96:21	130:18,20 131:20
149:3	conduct 113:21 120:5	118:20 120:19	create 16:11 153:21	132:22,25 133:1
commencing 2:17	120:7	121:17 122:9	created 103:3 146:16	134:6,17 135:13,17
comment 85:13	connected 55:9 97:17	125:11,22 127:3	167:12	135:24 136:3
comments 85:7	connection 28:22	129:18 130:5,12,25	creation 158:25	141:22 146:9
Commission 182:6	135:20	131:3,5,6,9 132:2	creator 158:11	148:11,19 149:1,12
communicate 29:9,12	consider 137:22,22	132:12 133:5	cross 4:3 33:16 75:7	149:15 150:6,6,22
98:24	consistent 62:21	134:13,15 137:17	83:13 126:18	153:22,22,22
communicated 11:11	182:7 184:11	138:20 139:9,18,21	143:25 144:12	161:13 167:20
24:4 37:11 86:7,16	constantly 185:21	139:22,25 140:3,20	153:8 174:22	173:16,16,19
communicating 9:6	consult 13:5 120:14	140:25 142:11	CSR 1:25 2:18	184:25 185:6,8
10:3 11:21 24:8	126:12 189:5	143:6,21,23 146:7	curiosity 188:5	days 45:7 69:1 121:2
25:16 81:18	consuming 65:8	147:3,6,8,9 149:4,5	current 67:8 92:21	129:12 130:8
communication 9:10	contact 44:16,17	149:9 150:22	95:7,9,11,14 111:8	138:13 156:12
11:15 20:10 26:18	52:12 54:16 56:24	151:25 152:1 159:4	146:2 155:4	173:21 190:4 191:8
66:1 70:17 74:7,11	78:6 98:11 121:23	159:5 160:9 162:2	currently 14:24 59:6	daytime 21:24 29:24

PROCEEDINGS April 24, 2007

day's 51:2,4 65:23 day-shift 86:2 deal 10:13 89:24 131:8 148:18 150:20 dealings 172:5 dealt 163:22 dear 62:9 death 70:18 decide 190:18 decision 7:14 113:25 114:6 185:15 191:8 deck 54:19 dedicated 115:24 120:18 definitely 71:10 162:8 delegated 164:5 delivery 9:17 demand 165:8 department 12:13 25:13 36:21,22 37:6 37:7,11 38:17,21 39:2,21,23 50:2,11 50:14 53:21 55:13 67:3 71:2 72:12 74:12 95:11 103:6 103:10 113:24 116:18 142:2 155:12,16 156:6,13 156:17 159:21 163:19,22 168:6 171:13 172:6,21 180:19,24 181:2 182:2 184:18 187:14 departmental 31:4 departments 37:21 49:10 71:16 186:2 depending 131:24 132:21 145:2 164:5 depends 161:13 173:19 184:17 describe 16:4,20 72:20 93:18 112:25 157:1 188:7 described 16:21 28:9 46:12,24 81:20 100:14 116:10,12 116:15 117:4,6 140:21 142:15 167:10,17 172:10 175:18 describing 52:25 description 5:5,8 94:22 95:8,10 111:8 145:21 158:1,2,5,22	163:12 172:25 181:4,6,13 182:1 descriptions 111:6 158:9 172:21,24 deserved 179:14 designate 134:8 designated 11:15 101:6 115:25 116:4 117:2 137:11 148:24 designation 115:13 desk 23:5,12 24:5,8 29:6 43:4 51:11 54:13 56:23 63:16 66:11 136:20 detail 93:19 detailed 70:3 determinations 165:24 determine 145:10 170:9 determined 101:14 determining 133:15 166:5 device 9:8 10:1,2 11:14 20:14 53:12 53:13 62:17 100:16 100:20 142:20 devices 26:15 dial 131:4 143:20 Diane 4:6,9 92:6,13 168:10 differ 35:8 36:5,8 37:4 difference 30:21 32:24 55:25 56:3 73:17 74:3,4 differences 30:18 different 7:19 9:18 25:17 28:24 39:17 45:10 50:12 53:9,13 53:15,17,20,22 71:8 71:11 72:9 81:22 82:7,17 103:17 116:22 134:9 143:12 159:9,17 160:8 165:4 167:21 171:2 179:5,12,14 differential 8:2,21 9:1 9:6 12:4 32:18,21 45:16 53:24 54:3 57:24 58:3 61:16,20 61:25 71:6 80:21 81:8,17 129:22 130:4 153:19 176:21 180:17	difficult 49:19 dire 4:8 95:2,4 102:24 103:1 direct 4:3 9:9 13:20 52:14 59:4 70:6 95:21 104:2 126:9 131:4 145:16 154:13 165:3,6 174:10 directed 57:24 131:2 183:2 direction 36:9 47:16 directly 10:3 50:22 100:21 120:9 131:8 156:5 director 146:2 disagree 185:1 disassemble 48:10 disassembles 16:8 disbanded 110:11 discharge 120:2 discipline 119:22,25 120:15,16 discontinued 172:1 discovered 20:22 168:25 171:12 177:2 discovery 171:15 182:25 discrepancies 119:16 119:17 discuss 75:24 78:22 120:5,6 discussed 185:17 discussing 176:6 discussion 51:25 57:20 79:3,7 119:2 142:18 189:8 disposable 94:1 96:12 disposal 94:2 distinguished 8:22 distributed 159:25 distribution 133:11 divert 165:9,10,11 divided 69:18 doc 138:24 doctor 19:15 22:15 22:18 45:1 doctors 18:17 36:25 37:7 96:17 165:18 document 29:10 84:4 94:19 101:24 102:3 111:2,3 118:5,11,13 118:14 123:25 124:3 138:25 157:12,23 158:11	158:16,25 182:8,10 documentary 189:12 documents 154:4 doing 6:16 22:17 28:24 29:16 36:20 46:14 65:13,13 66:15 71:22 109:7 131:12 132:4 142:12 152:6 165:3 165:12 171:2 179:2 179:18,20,22 191:3 Don 174:14 door 17:23 18:8 20:6 22:23 28:16 38:16 188:17 drawer 182:10 drop 65:12 dropped 181:25 drugs 40:3,11 due 103:11 191:8 duly 13:18 59:2 92:7 154:11 duration 9:10 27:25 28:3 duties 8:22 10:18,25 11:1,2 16:5,12,19 16:24 18:1 22:13 28:17,19 30:21 32:24 35:12,14 36:5 37:2,3 46:20,24 48:5,17 55:25 56:6 62:3 71:22 75:25 77:10 79:1 80:19 81:13 84:9,15 93:10 93:16,20 112:19,22 113:1 117:4 133:24 134:1,4,5 140:22 150:21 152:11 156:14,19 158:7 163:16 164:5 179:16,18 duty 12:5 17:5 21:19 26:4 27:10 28:25 30:22 44:3,4 49:2 66:25 67:2,3 72:8 131:16 133:16 137:19,23 138:2 D-I-A-N-E 92:13	164:21 167:11 172:4 180:23 ease 185:19 easier 72:15 easily 64:22 east 116:23 eat 91:5 echo 18:18 21:12 education 155:5,9,15 educator 155:10 effect 24:24 103:6,13 110:12 164:17,19 efficiently 6:21 eight 17:14,14,17 33:19 87:18 104:16 155:7 eight-hour 10:23 150:24 either 56:14,24 65:15 67:16 69:9 87:5 100:1 113:12 122:6 131:15 136:20 137:13 146:12 183:14 190:7 eliminated 164:14 ELLA 3:19 em 188:13,13 emergency 63:9 employed 14:24 34:4 34:5,8,9 35:21 55:13 56:10,11 58:6 59:6,9,22 60:14 92:15 146:5 148:4 154:24 161:17 186:23 187:1 employee 60:7 79:17 80:14 126:23 127:13,18 129:10 163:25 164:4 169:9 184:16 employees 1:7 2:7 6:6 9:16 10:24 11:11 12:16 13:3 58:2 171:12 175:19 177:5 185:19,20 employer 3:12 5:3 6:11 7:6,25 8:20 9:14 12:2,14 14:20 14:23 15:21 32:17 32:21 59:23 81:16 92:3 94:10,11 95:17 101:18,25 104:17 104:24 110:18 123:18,19 125:15 138:23 158:16 181:6 189:2,3
---	---	--	--	---

PROCEEDINGS April 24, 2007

Employer's 8:6 12:17 94:12,16,24 95:19 101:21 102:21 105:1 110:22 111:1 111:11,15,17 118:6 118:8 123:13,20,22 124:1 125:12,17 157:13 employment 30:7 59:12 68:8 empowered 7:21 empty 88:3 170:21 enables 65:2 encompasses 116:22 endless 152:18 endoscopy 116:23 engage 120:15 ensure 18:3 113:6 118:3 122:18 123:6 ensures 122:17 124:12 ensuring 18:2 entire 34:4,15 62:21 188:14 entirety 69:3 entitled 8:7 envelope 191:2 environment 117:20 Environmental 117:24 EOC 5:10 117:24 118:17 equal 173:20 equipment 16:10 18:3 18:4 63:9 68:3,10 68:11 96:6,21 133:7 140:24,24 141:4 142:15 157:6 165:18 167:1,3 ER 63:10 especially 152:21 Esquire 3:8,14,14 6:11,13 essence 176:20 essentially 11:22 65:3 establish 10:11 established 170:2 estimate 31:9 et 11:8,13 15:14 86:22 137:5 144:12 178:22 186:10 evaluation 113:18,19 evaluations 113:5 evening 9:24 28:7 30:11,13 32:2 33:21 57:14 60:22,23 61:8	61:23 62:23 65:20 65:25 66:5,23 67:7 72:2 73:8 80:12,16 86:1 114:18 115:2,9 121:8 128:2 event 13:1 54:18 everybody 67:17 86:18 191:4 everyday 82:7 everyone's 17:24 evidence 4:14 5:3 7:10 8:17,24 9:20 10:20 11:4,9 95:20 105:2 111:18 123:21 125:18 189:13 exact 45:19 82:13 exactly 39:25 42:11 52:21,22 examination 13:20 33:16 52:2 56:17 59:4 75:8 83:13 90:11 92:9 95:4,21 103:1 104:2 126:18 148:8 150:16 151:13 153:9 154:13 174:22 186:20 188:3 examined 13:19 59:3 92:8 154:12 examining 84:4 94:19 111:3 118:14 124:3 example 11:12 18:23 29:6 64:19 70:15 71:12 78:16 96:21 132:20 178:20 examples 37:8 exceptions 103:19 exchange 191:1,3 execution 8:18 9:4 exercise 132:5 166:5 exercised 132:1 exercising 132:10 exhibit 6:22,25 7:2,4 7:5,8 8:19 9:5 94:12 94:16 95:18,19 101:21,25 104:17 104:20,25 105:1 110:22 111:16,17 118:8 123:18,19,20 123:22 125:16,17 133:4 138:23 139:10 145:21 157:13 181:6 exhibits 4:14 5:1,3 6:21	exist 104:13 156:16 164:22 171:20,24 existed 103:20 164:16 182:8,10 existence 59:24 63:22 104:5 114:8 139:3 164:20 172:4 existing 181:12 exit 104:18 expect 112:21 166:2,4 expectation 166:4 expected 22:12 41:19 43:9 44:13,21,22 48:23 107:7,10 108:10,14,19 152:7 158:12 162:21 163:2,5,8 165:24 185:11 experience 24:12 27:3 30:6 31:15 32:6 52:6,11 53:23 54:10 56:13 62:16 70:6 71:8,24 75:1 80:10 130:7 132:23 144:25 160:13,24 188:15,16 experiences 114:9 explain 95:25 160:2 161:12 explained 79:19 82:24 explanation 32:9 expressed 78:8 79:9 79:16 extend 31:23 extension 22:1 35:1,2 35:6,10,13 47:9 53:18 71:1,23,24,25 72:4 103:12,15,23 115:24 116:5,7,15 134:25 142:1 160:7 190:8,13 extent 75:12 107:17 120:1 129:15 extra 45:13 58:12,13 84:2 127:20 164:9,9 168:2	181:20 fair 140:23 143:24,25 148:3,5 186:12 fairly 144:9 161:19 fall 44:10 familiar 63:23 83:19 83:22 93:7,10,16 110:6 122:13 156:15,19,22 163:13 169:15 173:4 187:16 familiarity 169:4 fan 174:14 far 78:19 86:8 116:9 120:11 178:6 fashion 93:19 130:17 fast 62:8 154:22 faster 20:9,10 February 8:4 12:1 45:4 53:1 59:21 61:14,18 68:20,21 72:4 80:15 81:24 103:7,10,14,20 104:6,10,18 105:20 105:24 109:22,23 109:25 110:2,4 129:4,11,20 130:23 139:13,20 Federal 6:9 feed 15:9 feedback 163:24 feel 127:11 feeling 186:16 fell 74:12 fellow 107:12 felt 132:3 female 78:24 fiber 18:15,18 43:17 43:22 44:5 figure 171:18 file 86:13 124:15 182:10 filed 86:15 fill 82:21 filled 45:14,22 110:3 110:10 111:21 112:5,23 122:20,23 122:25 139:7 146:17 176:12 filling 45:5 123:3 147:22 fills 122:20 final 114:6 finally 7:14 find 12:15 13:2 18:7 18:12 39:16 42:22	42:23 50:2 52:7 56:21 57:1,9 66:12 128:19 145:18 162:11,12,15,16 168:22 186:10 fine 76:14 77:19 190:6,11 finish 38:4,10 49:2 finished 132:4 firm 6:12,14 189:15 first 8:14 10:13 13:18 42:17 43:15 50:2 51:12 59:2 82:14 92:7 99:6 117:22,23 126:23 127:18 145:8,10 150:1 154:11 169:15 181:1 187:8 five 15:24 34:1 67:7 69:1 71:14 108:6 115:1 126:14 130:7 130:24 132:13 134:3 141:23 142:5 159:24 177:20,23 177:25 flags 184:17 float 115:20 Floor 3:15 fluid 152:15 FOB 44:5 focused 71:18 Foley 3:13 6:12,16 follow 13:19 40:16 44:22 45:20 106:21 106:22 following 15:15,17 96:15 113:7 follows 59:3 92:8 154:12 foregoing 192:6,7 forget 65:16 Forgetting 172:3 form 66:1,17 117:23 118:2,17,18,22 122:13,14,16 124:5 124:9 139:3,6 formal 120:15,16 forms 117:15,17,19 147:23 162:22 forth 48:15 51:13 forward 90:24 forwarded 65:22 found 70:11 foundation 121:14 four 33:22,25 35:10 67:7 71:13,15,17
--	---	---	--	--

PROCEEDINGS April 24, 2007

74:10,18 101:4,11 115:4 159:24 177:20,23,25 frame 7:22 Francisco 3:16 6:12 Frank 174:15 free 71:20 frequency 52:7 62:18 frequently 150:13 Friday 155:23 front 66:11 136:20 frustrated 186:16 frustrating 185:24 186:18 FTEs 168:24 176:4 full 192:8,9 function 25:8 48:24 62:13 71:4,8 123:9 141:11 173:1 functioning 45:9,11 82:23 83:17 84:11 functions 77:23,24 158:7,13 160:1 167:10,13,17 172:9 187:20,22 fundaments 172:9 further 52:1 58:20 90:10,18 126:9 150:15 153:6,25 174:9 188:2	22:7 53:4 62:11,19 71:17 72:17 77:25 81:1,2,7 84:24 86:4 116:16 121:9 135:17 141:20 151:9 161:10 167:22 184:2 185:8 giving 21:13 38:9 69:13,24 74:5 85:24 136:3 138:4 163:20 172:14 gloves 15:14 go 11:8 18:19 22:17 23:12 37:12 38:25 47:23,23,24 48:1,7 48:12,12 49:3,4 50:7,17,19 51:13,13 55:6,8 57:17 63:21 64:23 69:22 70:15 71:21 87:1 88:14,24 89:9 118:24 126:15 135:7 151:24 154:22 160:22 162:11,12,14,15,15 164:8 165:3 170:12 185:23 goal 182:4 goes 170:6,21 going 6:20,25 15:17 21:10,12,13 22:1,2 22:4 31:20,25 32:13 37:17 38:22 41:9 48:16 51:12 66:14 69:23 76:14 77:16 78:1 79:12,20 84:13 92:3 94:15 97:2 110:14,25 118:5 127:7 135:13 137:20 153:8 154:6 157:12,23 158:15 165:25 166:1,6 168:16 171:11 173:25 174:1 176:1 178:24 189:13 good 94:11 152:21 grade 84:10,16,19 Granados 4:5 58:24 59:1,6 90:19 grant 176:6,7 granted 179:3 190:9 graveyard 60:20 gray 119:4,6,9,12,14 greaseboard 136:13 136:14 great 93:19 174:21 greater 31:14,16,18	32:6 grievance 1:9 2:9 4:22 6:4,7 7:4,13,18 9:13 57:22 75:19,22 guess 15:11 33:22,23 36:10 55:3 152:23 guy 42:20 <hr/> H H 1:25 2:18 habit 185:22 hallway 44:19 50:6 hallways 50:5 143:6 hand 28:12 137:15 147:25 handed 135:18 handing 11:23 69:25 138:4 handle 42:25 44:13 79:17 90:7 149:24 152:5 handled 25:20 132:8 handling 90:8 134:3 handover 135:20 hang 62:9 90:1 happen 125:9 169:7 happened 79:25 181:24 happens 89:25 144:21 165:20 hard 54:12 Harrington 3:8 6:13 7:15,23,24 8:14,16 12:21,23,25 13:13 13:14,20,21 17:18 33:9 38:4,8 47:3 52:2,3 56:16 57:23 58:21,24 59:4,5 74:1,17,25 75:7,16 75:17 76:4,8,14,21 76:23 77:1,4,6,19 81:4,11 83:12 84:2 84:5 85:1,4,9,10,14 90:11,12,17,21 95:1 95:4,5,16 102:23,25 103:1,2,24 106:13 111:13 121:14 123:16 125:14 126:11,14,18,19 127:8 148:7 150:16 150:17 151:12 152:17 153:2,6,7,9 153:10,24 157:16 157:20 169:20 170:2 174:13,19,22 174:23,25 186:19	188:3,4,10,18 189:4 189:5,9,17,18,20 190:6,11,15,24 191:12 Hayward 3:5 head 14:9 16:24 86:13,16 heads 21:13 healthy 32:12 hear 9:7,16 11:13 14:16 26:23 51:5 81:4 98:6,18,19 100:23 143:5 144:13 160:25 heard 11:17,18 26:21 143:8,16,17 144:11 144:15 160:21 161:1,1 hearing 189:11 hearsay 76:3,5,20,21 76:22,23 heart 31:21 134:22 heavier 106:25 held 92:23 121:3 155:6,8 help 46:14 64:16 65:17,19 66:12 122:2 157:7 163:20 164:8 helping 157:8 164:7 168:15 hereditary 124:23 HERTH 3:19 high 17:12 higher 1:10 2:10 6:8 36:9 82:23,24 83:15 83:18 84:9,15,19,20 85:19 169:3,5 171:3 171:8,9 172:25 178:13,23 179:5,7 179:20 hired 72:24 113:23 146:25 147:8 168:8 180:23,24 hiring 113:25 historically 11:9 57:24 history 124:24 164:19 hold 93:1 116:4 157:8 176:2 holding 105:16 129:5 133:21 holidays 155:24 home 159:16 hook 161:25 hopefully 32:11 66:21	182:4 hospital 1:4 2:4 5:8 5:10,12 6:5 9:15 11:11,11 14:20 16:3 34:5 59:7,10,13 92:16,19 126:24 127:14 143:3,6,15 154:24 hot 13:16 hour 62:19 108:5,6 130:8,24 132:14 134:4 hours 17:2 73:9,10 HR 182:24 183:11,15 human 145:13 171:21 171:22 Hyperthermia 5:13 hypo 18:5 hypothermia 16:13 18:2,6 35:15,15 36:13 39:24 40:22 40:24 43:19,20 54:25 55:6 117:21 122:14,18 124:5,21 124:22 125:1,5 133:2,14 hypothetical 135:7 <hr/> I idea 17:11 identification 4:14 5:3 7:9 13:3 94:13 101:22 110:23 118:9 123:23 identified 11:24 163:11 181:18 immediate 131:22 144:19,20 145:1,4 186:8 immediately 45:16 54:14 145:13 162:16 impact 10:24 76:10 impetus 186:13 implementation 13:6 24:15 implemented 140:16 185:18 186:6 implementing 185:16 important 55:5 impress 76:17 improperly 120:13 Inciardi 3:14 6:15,19 include 93:23 96:3 115:14 116:23 155:15 156:1
--	--	--	---	--

PROCEEDINGS April 24, 2007

188:12 included 135:1 158:7 includes 38:19 93:25 99:18 including 140:24 incoming 65:23 incomplete 87:2 increase 125:8 INDEX 4:2 5:1 indicate 181:12,19 indicated 10:2 54:6 64:13 134:4 indicates 181:5 individual 9:7,23 10:12 132:10 141:2 178:21,23 180:12 185:6,7 individually 86:5 individuals 74:13 169:10 188:15 individual's 9:11 inform 123:8 137:15 information 18:12 23:10 24:4 26:10 43:9 51:21 54:7,11 54:20 70:10 82:16 86:5,6,7,8,9,10,13 86:15,16,17,19 87:4 87:5,6 110:12,14 136:2,6,11 137:4,20 informed 125:1 infusion 133:8 initial 71:18 88:11 123:5 124:14 133:2 initially 60:7 144:25 input 113:20 114:5 120:8 inquire 90:5 91:5 102:23 inside 26:24 64:8 98:3 98:6,12 119:14 160:14 instance 34:17 50:1 148:12 188:12 instant 186:13 instruction 62:3 intend 111:25 intended 85:9 interaction 19:10 64:14 75:25 172:5 Interco 96:22 intercom 98:21,23 interface 164:2 internal 20:8 International 1:7 2:7 6:6	interpretation 37:25 38:6,7,13,14 interrupted 48:21 interrupting 38:8 76:17 interventional 36:24 48:15 49:9 interview 114:2,3,4 interviewing 113:23 interviews 117:9 introduced 25:16 27:18 82:15 180:4 180:20 invasive 93:21 inventory 133:12 investigate 168:22 171:17 investigation 75:21 176:11 178:5 invite 7:19 involve 9:16 39:25 96:9 106:10 161:9 162:6 involved 18:1 31:20 75:19,21 123:3 182:18,21 185:15 involves 40:1,1 55:1 involving 6:23 7:3 179:9 irrelevant 11:22 169:20 170:5 issue 7:20,22 77:9 79:8 152:23 issues 7:12 10:4 19:13 19:14 28:20 79:14 81:18 154:19 item 19:15 20:12,12 22:15,17 87:7 items 18:20 23:1 24:10 96:19,25 104:17 118:4 IV 93:21 IVs 16:11,11	59:10 79:22 92:25 93:7,16 94:22 95:7 95:9 111:6,8 113:1 141:11 145:21 147:4,11 149:25 152:15 156:16,22 158:1,2,5,9,21 160:1,2 163:11,13 169:12 171:1,2,3 172:20,24,25 175:13 178:16 179:9,11,12,13,14 179:17,19,21,23 180:2 181:4 182:1 186:3 187:2 191:6 jobs 95:23 178:20 joint 4:13 6:21,22,25 7:2,4,5,8 8:18 9:4 182:6 Jr 3:8 6:13 judgment 12:8,11 13:2 132:1,5,11 166:5 July 4:25 7:7 June 15:24 34:10 jurisdiction 13:6	58:13,15 60:5 62:22 66:14,14,21 69:1,11 69:12,14,23 71:15 71:21 72:17 73:1,12 74:9 75:4,14 78:7 79:14,20,25 80:2 82:21 85:2,4 86:8,8 88:22 89:22,24,25 98:9 100:24 107:12 109:19,20 113:13 115:8 117:14 120:14 122:25 124:20 136:16 137:5,10,12,13,16 137:23 139:2,5 140:6,15 141:6 143:15 145:9,25 148:22 153:11 159:23,25 160:20 160:24 161:9,17,18 166:23 167:15,19 167:24 168:1,5 171:25 175:10 176:2,16 177:1,4,19 180:3,7,11,16 183:6 183:14,17,19,24,25 184:1,9,13 186:22 189:16 knowledge 55:13 75:13 81:24 112:6 112:18,21 125:24 126:5 161:2 172:24 177:24 180:18 known 163:13	lead 45:14,16,20,21 45:22,25 46:2,9,11 46:15,22,23 55:12 55:15,17,19 56:3,8 56:10,13 57:15 58:6 58:7 72:24 73:13,18 73:19 74:6,7,8,11 74:20 75:25 77:10 77:23,25 78:1,3,5,6 78:10,11,23 79:10 79:12,20,22,23 80:12 85:22 90:14 101:6 104:4,7,8 105:9,18,19 109:22 109:24 110:6 111:6 111:9,20 112:15,19 113:1 114:10,13,22 117:5 118:19,21 119:8,13,21,24,24 120:18,21 121:2,3,7 121:9,12,16,19,23 122:6 124:8,12 125:22,25 126:2,4,6 139:7,12,14,15 145:22 146:5,12,16 146:22,25 147:8 148:4 158:21 160:7 163:13,16 164:10 164:24 166:8,15,20 166:21,24 167:6,11 167:12,15,17,19,22 170:21,22 171:20 172:4,9,10 180:23 180:24 181:2,13,21 181:25 leading 149:23 152:19,20 153:6 leads 117:18 126:2 lead's 76:9 88:11 leaks 96:3 learn 17:20 20:3 39:5 51:20 62:7 76:2 77:12 80:24 161:5 187:14 learned 62:8 77:15 90:2 learning 168:14,16 175:3,17 leave 30:24 65:12 67:5,6,25 89:21 154:5 187:10 leaves 21:22 156:11 leaving 187:15 left 86:17 95:7 175:7 lengthy 31:22 lesser 31:14 32:6,8
---	--	---	---	--

PROCEEDINGS April 24, 2007

letter 88:24	161:16,17 164:10	99:15,21,22 102:15	managers 67:3,6	mentoring 175:16
letting 66:13	164:16 173:25	103:15,23 114:23	168:7,7	method 9:6 81:18,22
let's 18:18 20:21	174:3,5 177:1,18	114:25 115:2,5,10	managership 178:9	MICHAELSON 4:10
22:15 31:21 32:14	190:13	115:18,24 116:3,5,6	manager's 17:23 18:8	Michelson 4:7 154:10
43:19 45:15 50:11	longer 31:21 173:23	116:6,10,15 128:24	22:23 28:16 38:16	154:17 188:20
85:25 90:25 91:1,3	look 17:23 20:6 22:23	129:21 130:22	manner 186:3	mid 115:15,16
99:6 117:22 126:15	31:15 38:15 40:6,8	134:11,13,20,25	March 59:21 112:6,8	middle 12:1 44:23
130:20 132:22	69:12,15,22 70:15	135:2,5,21 137:18	112:8,14 139:2,4	129:10,20
135:7 143:14 159:7	87:8 94:17 102:1	139:16 141:24,25	145:22 147:1,1	midnight 9:25 51:3
162:19,19 165:14	110:25 118:11	142:1,6,7,9,23,25	181:16	Mill 2:17
175:11 189:6	124:1 152:5 157:23	145:6 150:9,13,19	Marina 3:9	mind 14:5,15 39:11
level 4:24 170:20	158:15,17 162:12	151:6 155:11 159:8	Maritime 3:15	minimal 71:25 74:8
171:4 178:13 184:1	168:20 178:1 181:5	160:5,6 162:19	marked 4:13 5:3 7:9	minor 16:10
License 192:19	181:10	173:14,17,21,23	94:12,16 101:21,25	minute 40:18,20
life 62:9 70:18 164:6	looked 138:23 158:18	174:1,1 180:4,9,13	110:17,19,22 118:6	minutes 33:11 90:25
light 99:13,14,15,21	168:22 176:11	184:15,21 185:7,16	118:8 123:19,23	126:14 132:4 154:7
100:3,6,22 108:18	looking 51:21 54:7	185:18	124:1 157:13	188:23
108:19 148:20,21	56:22 57:10 61:13	maintain 16:12	158:16	missed 43:15
161:21 163:4	69:20 128:20	maintained 68:5,7	masks 15:14	mix 179:18
lights 99:5,19	162:17 175:25	124:15	matches 18:21	mixing 39:9
likes 189:15	176:7,16 185:21	majority 65:9 68:7	material 141:9 164:4	mode 145:8,9,10
likewise 28:1 29:22	186:17	72:13 114:14,16,19	materials 157:7 167:1	moment 41:25 51:23
135:24	looks 146:2	179:2,13	matter 8:12 121:24	88:15 111:13
limited 184:20	lost 12:18	making 18:16 44:2	126:21 144:17,21	126:12 172:3 174:6
line 140:14	lot 45:22 50:12 107:3	65:16,18 89:23	176:11 192:6,10	188:21 189:6
lines 93:21,21 104:18	149:10,16 152:3	163:21,24	matters 81:24	Monday 130:20
list 5:7 103:3 118:4	159:9 173:23 182:5	malignant 5:13 16:13	maximum 134:14	132:19 135:8
listed 104:17 118:4	185:20 186:16	16:16 18:2,5 35:15	142:9	155:23
listing 18:8 19:18	lots 88:2	36:13 39:24 40:24	Ma'am 95:6	money 33:1
139:10	loud 144:9,10	43:19,20 54:25 55:4	mean 19:5 27:9 37:8	monitor 113:6
literally 11:23	loudly 14:15 127:10	55:5 117:21 122:14	47:18 48:6 70:17	monitoring 117:7
little 52:10	144:11	122:17 124:5,21,22	77:16 86:5 87:22	month 45:18 69:2
live 52:14	low 17:12 133:10	125:1 133:2,14	101:11 114:16	82:9 117:21 118:2
LLP 3:13	150:4	man 19:7	125:5 137:11 142:5	118:19 124:13
Local 1:7 2:7 6:6	lower 36:9,11 95:7	management 113:4	144:10,10 150:11	130:21
located 18:20 53:2	lunch 91:1,3,6 113:7	114:6 156:5 182:15	174:2 178:19	monthly 82:12
79:14 90:3 96:23	lunches 113:7 119:20	182:18 183:12	181:23 189:22	124:12,17 139:7
97:10,15 99:5,11,14	163:20	185:17 187:8	190:10,15	months 164:18
99:19,25		manager 30:2,22 31:4	Meaning 47:5 105:15	morning 20:6 22:22

PROCEEDINGS April 24, 2007

M-I-C-H-E-L-S-O-N 154:18	32:16 34:2 50:23 51:1,8,11 57:14 58:10,12,18,19 61:5 61:19,21 114:18 115:6 121:8 127:24 136:1,3 146:13 nights 56:14 115:9 nodding 14:9 nondisciplinary 8:12 nonexempt 187:7 188:1 nonmanagement 187:6,7 nonresponsive 106:14,16 normal 10:22 14:16 22:13 105:13 134:5 151:2 Nos 7:8 notate 83:1 notated 125:2 notations 23:20 103:25 119:15 note 178:17 noted 77:3 notes 29:10 181:11 192:9 noticed 24:3 notification 67:20 notify 23:23 43:5 81:23 notifying 23:6,25 54:16 November 4:17 6:23 number 8:17 22:3,4 32:6 40:3 43:14 53:9,13,17,20,22 74:8,18 78:7 79:24 88:8,11 90:14 101:9 104:4,13 105:7,9,17 123:7,8 124:14 131:4,5 144:5 147:15 152:18 160:8 162:4,12 173:15 numbers 17:7 31:14 33:3 62:19 102:9,19 102:19 104:17 156:23 numerous 77:22 134:16 nurse 31:2,8 44:19 67:1,1 100:1 122:3 157:9 163:1 nurses 37:18 63:14 94:6 96:17 165:18	nursing 30:24 <hr/> O O 6:1 object 38:8 77:2 85:12 152:18 169:20 objected 85:10 objection 73:20,22 74:14,24 75:10 76:3 76:5 77:3,14 85:14 103:24 104:19 111:14 123:16,17 125:14 objections 76:16 95:16 obligated 10:15 obligation 10:6 obnoxious 85:5,6 observations 172:6 observe 120:12 178:2 obtain 133:12 141:3 obtained 12:13 obtaining 68:14 obvious 60:6 occasion 28:23 29:12 30:15 41:7 61:1,4,7 66:6 75:18 77:8 78:22 83:6 98:6 155:18 156:4,9 160:11,22 occasions 41:6 68:2 89:17 129:8 147:15 156:8 occur 9:10 24:12 occurred 9:4 10:14 52:25 113:21 149:20 181:15 182:12 occurs 22:9 offensive 85:2 offer 8:24 9:20 10:11 office 119:15 122:7 off-going 21:1 74:20 136:1 oftentimes 189:15 oh 17:8 19:14 43:20 97:20 162:8 165:20 190:10 okay 6:18 8:11 12:20 13:8,11,25 14:3 15:3,4,19 16:1,14 16:19,25 17:9 18:7 18:23 19:4,7,10 20:3,7,13,16,21 21:6,8,10,23 22:3,6	24:3,15 25:2,4,8,15 26:2,17 27:12 28:1 28:12 29:2,15 30:5 30:12 31:1,9,17 32:1,4,9 34:12 35:25 37:17,18 38:11,16,18 39:1,10 39:12,14 48:20 51:11 52:4 53:10,14 54:2 57:13 58:16,22 59:12,22 60:4,10,14 60:17 61:23 62:10 65:24 69:22 74:22 76:2,14 77:19 78:20 81:12 84:6 87:9 90:22 91:4 94:8,11 95:16,17 97:22 99:6 101:20 103:24 104:1,11,24 105:21 106:21,23 107:24 109:21 110:16 111:15 115:19,22 116:10 117:15,22 118:7 119:19 120:9 123:14,17 125:15 126:10,13 127:1,11 127:17,25 128:6,15 129:2,8,13,19 130:20 132:13 133:6,13,20 134:13 135:6,24 136:6,10 139:6,23 140:21 141:17 142:17,23 143:3,23 145:25 146:5 147:10 151:1 153:18,21 154:1 159:22 170:1,16 174:7,11 175:23 177:21,23 178:1 181:18 183:10,14 184:6 188:10,18,19 189:3,7,24 191:4 olaris 133:8,15 once 89:19 118:19 122:24 129:12 179:22 oncoming 136:7 137:6 ones 152:21 ongoing 5:11 141:15 165:20 on-coming 21:1 oOo 6:2 open 10:8 35:4 110:10 164:15 opened 72:1 140:17	opening 8:15 13:9 operable 106:1 operate 105:5 106:5 161:6 operated 55:4 141:19 161:2 operates 106:8 operating 9:13 15:2,3 16:9 21:23 34:10 47:15 52:19 56:21 59:15 64:5 65:7 72:16 74:9 78:4 79:24 88:5 89:20 93:22 94:2,5 97:1 98:3,6,11,12 99:16 100:1,5 103:12 115:18 133:24 134:14,24 135:1 140:14 142:9 143:16 155:11 157:5 160:11,14,18 172:7 operation 72:5 145:7 operations 163:18 operative 53:1 155:24 159:16 188:8,15 opportunities 189:11 opportunity 118:12 153:19 157:24 178:22,25 opposed 26:3 52:9,24 77:15 97:18 131:12 140:7 optic 18:16,18 43:17 43:22 44:5 options 159:9 oral 189:14,15,22 order 12:15 21:11 51:12 86:22 95:25 110:17 133:7,11 171:9 orderly 155:11 178:21 179:3,12,21 orders 70:8 organization 184:1 orienting 163:24,25 168:17 original 137:3 ORs 68:13 173:13 outdated 40:5 outdates 40:15 outer 116:18 142:2 outpatient 72:21 outside 26:23 44:19 49:2 55:6 65:4 162:25
------------------------------------	--	--	---	--

PROCEEDINGS April 24, 2007

out-of-department 34:22,23 36:15,16 36:20 37:4,10,16 47:14 48:13,14 71:13,14,19 117:3 145:4,5 160:6	paging 26:15 41:11 97:12,14,24 98:2,10 143:12,15 160:14 160:20,25 paid 8:20,25 9:1 53:23 57:24 129:22 130:4 169:19 171:12 176:24 177:2 180:16 183:1 190:20 Palo 1:16 2:17 panel 114:3 paper 154:4 183:21 Parkway 3:9 part 48:24 81:6 107:18 110:3 117:14 120:4 128:3 129:4 136:8 137:9 138:1,2,4 146:17 180:23 182:11 participate 114:3 participated 170:3 participating 117:8 participation 191:5 particular 18:24 19:25 20:1,4,23 42:17,25 53:14 56:20 75:19 78:13 79:19 101:16 106:11 108:9 109:11 116:21 130:9 131:20 132:3 132:19 134:6 143:20,21 161:9 162:20 180:12 189:20 parties 6:20,24 7:3,11 13:4 parts 16:13 pass 20:19 54:8 passed 124:23 patient 18:21 23:16 23:17,18 63:10 65:3 65:5 124:24,25 157:7,8,8 patients 16:11,15 55:3 157:5 178:22 patient's 23:17 65:1 Paul 1:2 2:2 3:4 4:5 58:24 59:1 pause 174:8 pay 1:10 2:10 6:8 8:2 8:8 12:18 45:13 58:12,13 81:8 82:25 84:10,16,19 153:19 168:2 169:1,2,5,10	169:13,18 170:18 170:24 171:4,18,19 171:24,25 176:17 176:19,23 179:3,14 182:25,25 183:24 184:11 paying 12:3,7 32:18 32:21 33:1,5 171:23 172:25 payment 81:16 138:20 175:18 184:2 payroll 177:6 184:2,9 187:22 pediatric 18:14 43:17 43:20,20 44:6 pen 63:8 pencil 63:8 people 17:14,17 32:11 44:16 52:11 74:10 77:18 79:21 89:22 117:12 131:5 159:17,17 160:5 162:17 163:24 174:15 176:5 185:22 people's 46:9 percent 8:2,20 9:1,5 12:3 27:17,22 32:18 61:17 129:22 138:21 167:24 180:1,2,17 perform 16:20 32:25 64:4 109:10 127:20 134:1 performance 113:5 113:19 117:8 120:5 120:6 176:21 performed 134:17,20 152:12 173:15,16 173:17 performing 62:14 79:13 84:9 120:12 120:13 167:12,16 172:8 179:16,17,19 179:21 period 9:22 21:21 60:8,10 62:2 82:14 88:11 125:22 128:22 129:23,24 150:1 164:20,22 169:12 171:1 176:24 178:24 181:24 187:13 periods 82:25 129:3 181:19	perioperative 34:19 155:5,9,14,15 158:10 187:4,16 188:6 person 8:23 9:8 10:6 11:4,21,24 19:11 20:18 21:5,7,7,8,19 21:22 22:9 23:8 28:7 30:3 32:16 37:2,3 41:10 43:11 45:23 47:22 48:13 51:8,11,18 52:15 56:11 57:7,8 58:11 60:6 65:15,16 67:9 69:23 72:12,13 73:1 73:4,10,13 74:5,5 74:10 82:17 86:2 89:8 98:9,10 107:1 109:5,14,15,16,17 113:16 116:4 132:25 133:21 135:16 137:20 146:25 149:6,11 150:1,20 153:22 159:10 163:19 166:16 173:1 178:15,25 180:23 182:9 personal 80:4 112:18 156:12 personnel 79:14 persons 55:4 180:16 pertaining 6:7 58:14 188:8 per-room 88:7 pharmacy 40:13 123:8 phone 5:6 8:3,10 9:4 10:13,23 11:5,23 12:6,19 16:6 17:25 17:25 18:11 19:19 19:23 20:7,8,14,17 21:3,7,8,9,16 22:7,9 22:10,11,14,14 23:8 23:19 24:7,13,23 25:9,13,15,25 26:11 26:14 27:4,18,23 28:4,6,12,18 30:13 31:11 32:22,25 35:5 35:14 36:2,16 37:3 37:5,9,15,17 38:20 39:7,18,21 41:8,11 41:19 42:5,21 43:8 43:12 44:10,17 45:5 45:9,13 46:1,2,4,5,7 46:19 47:1,6 48:3	49:14,16,20 50:2,8 50:17,19,20,21 51:19 52:13 53:5,5 53:7,8,16,17 54:2 54:15,20 55:10,20 56:20,25 57:8,9,15 58:1,12,14 59:25 60:6 61:2,12,15 62:5,11,24 63:5,13 64:9 65:10,17,18,25 66:2 67:9 68:1,13 68:22 69:1,7,13,17 69:25 70:23,25 71:13 72:9 73:14,18 74:6,8,13 77:25 78:2,4,7 79:2,11,15 79:23 80:5,16,22 81:14,17 82:2,15 86:2 88:11,20 89:22 90:1,15 97:9,11,13 97:14,16,17,18 99:4 100:15,15,17,19,25 101:6,8,9,12,15 103:11,19,22 104:5 104:9,12,13,17 105:5,9,11,12,16,23 106:2,6,8,10 107:1 107:4,5,14,19 108:9 108:18 109:1,2,5 116:5 117:3 120:17 120:22 121:4,9,13 121:16,20 122:6,10 122:11 126:1 128:17,23 129:5,21 130:4,9,9,14,18,21 130:23 131:19 132:8,20 133:1,17 133:22 134:8 135:6 135:10,15,17,25 136:8,21,22 137:9 137:14,18,21 138:3 138:5,13 139:12,14 139:15,16 144:20 144:24 145:8,15,18 146:15,22 147:12 148:1 149:1,7,8,12 149:16 150:19,20 150:20 151:1,7 152:2,4,6,8 159:12 159:13,14,15,16,19 161:3,6,8,16 162:4 162:5,7,11,12,15,20 165:15,17 166:16 166:18,24 167:8,22 168:3 172:8 173:2,8 180:3,14 184:15,15
---	--	--	---	--

PROCEEDINGS April 24, 2007

184:21,24,25 185:2 185:3,4,7,12,16,23 186:6,10,17 phones 101:2,4 103:5 103:9 140:4,5 161:23 180:20 185:22 phone's 53:11 physical 11:24 21:15 physically 28:12 67:24 physician 44:20 96:22,24 100:2 121:24 122:3 145:11 157:9 physicians 94:6 141:7 149:22 pick 31:24 98:15 130:20 piece 164:4 place 50:7 123:6,8 133:7,10,11 143:24 192:7,10 placed 17:22 45:17 81:9 95:10 places 50:13 52:16 53:25 71:9 91:5 plan 57:12 play 144:5 playing 144:7 174:15 Plaza 3:15 plead 66:21 please 13:23 17:16 51:24 83:25 84:1 91:2 92:11 93:18 101:19 106:20 111:1,5,13 118:16 126:16 154:15 158:17 160:3 174:6 188:24 plus 60:5 134:4 149:8 152:7 pocket 162:1 point 8:25 65:13,22 71:20 72:12,23 75:15 76:17 82:8 90:20 135:22 168:1 175:16 176:10 189:10 pointing 105:8 portion 40:15 127:23 position 8:6 45:4,14 45:21 59:16 84:9,15 84:18 85:19 92:21 92:23,25 93:7,10 109:24 110:7,10	111:20 112:4,19 114:8 121:3 128:6 145:22 146:16 155:4,6 157:8 164:11,13,15,16 167:12,16 168:15 168:16 170:19,20 170:21,22,22,23 171:8,10,20,24 172:4 175:3,17 178:3 179:1 181:2,6 181:13 187:6,19,24 positions 7:18 155:8 156:16,20 169:11 possible 124:25 131:9 143:20 149:11 possibly 62:9 70:4 75:4 post 79:23 87:6 postage 190:20 posted 70:13 74:9,18 78:4 88:12 111:23 posting 90:13 post-hearing 191:9 potentially 142:10 Powell 177:14,15,18 178:3 180:19 184:7 practical 144:17,21 practice 178:8 practices 12:12 practitioners 144:1 186:14 precaution 125:1 precautions 125:3 predecessor 177:15 182:19 187:10,11 187:14 preference 141:9 189:19 190:23 premium 138:20 preparation 62:15 140:23 158:5 prepare 93:21 102:5 prepared 6:21 102:3 163:12 172:23 preparing 83:22 presence 11:20 76:9 79:10 present 3:18 8:13,16 8:18 15:20 31:5 67:22,23 74:16 75:6 92:4 96:6 99:12 113:11,15 117:12 121:8 126:2,5 128:6 144:1 147:4,11 156:14 167:18,20	170:20 171:2 189:12 presented 7:25 presenting 191:6 presently 14:19,22 16:25 55:17 111:20 120:21 169:9 pretty 31:22 50:5 106:8 166:25 169:21 176:2 previous 6:25 8:20 51:2 67:6 168:10,17 178:20 previously 58:2 147:19 pre-op 16:12 44:1 155:12 188:12,16 primary 132:23 prior 6:20 8:17 9:4 24:15,19,24 25:12 27:2,5,11 45:3 49:16 61:14,18,22 72:4 92:25 93:3 103:6,10,14,20 104:5 105:24 109:22 125:20,24 135:11 139:3,12,20 147:10 153:13 155:8 161:22 164:21 167:11 172:4 177:5 180:7 180:13 184:6,23 187:1 prioritize 131:11,22 166:3 prioritized 131:17 prioritizing 131:25 priority 26:3,5 probably 17:13 63:1 67:6 108:6 157:18 164:20,23 problem 164:3 190:12 procedural 7:11 procedure 97:4 125:10 141:15,15 143:24 procedures 87:19,20 88:8 134:20 135:4 144:6 173:15 proceed 8:15 13:12 proceedings 1:1,15 2:1,16 102:6 174:8 192:10 process 63:11 65:8 113:23 114:2,5	168:16 175:16 processing 18:16 product 164:7 products 65:4 promoted 93:12 proof 8:13 prop 21:12 properly 7:13 props 18:18 provide 11:6 113:20 114:5 120:8,9 135:20 136:7 137:6 157:4 165:19 provided 13:25 175:5 providing 36:25 122:5 149:21 157:3 163:23 provisions 189:21 proviso 190:7 pull 176:17 pulling 171:17 pumps 133:8,8,12,16 pure 74:23 purpose 39:20 100:15 purposes 177:6 put 81:3 119:14 140:2 179:12 190:3 191:9 putting 16:5 80:4 138:1 p.m 9:24 17:19 30:23 31:15,18 56:14 60:24 61:8 62:23 66:23 80:11,16 91:6 91:7 92:2 115:16 146:12 191:13 p.m.s 31:5	174:9,12,18,24 183:11 188:2 quick 187:15 quickly 150:13 quite 16:23 81:5 106:17 quote 65:18 170:4 177:2 178:16 <hr/> R R 3:1 6:1,11 13:24 radically 7:19 radiology 36:24 48:15 49:10 116:23 raised 152:23 ran 187:14 range 10:4 40:4 177:23 185:8,12 rare 41:6,7 reach 54:13 190:16 190:18 read 106:19 145:23 170:14 176:5 186:9 ready 15:17 55:8 87:1 real 171:10 realized 178:10 really 7:19 25:1,6 26:5 36:10 39:9 51:4 58:14 85:5 161:13 reason 81:1,2,7 184:22 reasons 11:16 186:5 rebuttal 90:21,23 189:4,9 recall 24:14 25:1 27:16 50:5 78:13 128:24 129:8 175:9 receipt 190:4 191:9 receipts 190:21 receive 8:7 10:21 23:3,5 26:9 27:12 31:11 45:23 61:1,4 61:7,16,19,25 62:3 62:18 63:3,4,12,14 64:13,22 65:23 68:2 71:6 82:16 121:13 130:7,16,24 147:14 153:19 165:17 171:9 received 7:9 28:9 58:12,13 70:21,22 77:22 80:4 90:15 95:20 105:2 111:18 123:21 125:18 131:24 136:19
---	--	--	--	---

PROCEEDINGS April 24, 2007

147:19	regular 26:4 62:13	representing 175:1	64:15 80:7 131:22	RHCP 171:25
receives 66:3	63:19,21 71:22	represents 102:8	responsibilities 25:18	right 14:10 24:14
receiving 45:22 54:8	79:17 97:19,20 99:2	reprocesses 65:1	62:4,12 67:10 70:1	27:6 29:5,8 37:24
58:2 137:24 168:2	99:4 102:19 121:4	reprocessing 18:20	82:17 119:11 124:9	40:11,14 42:2,4,23
168:25	132:15,18 134:1	request 11:5 42:25	124:11 147:21	44:4,24 45:12 47:12
recess 33:13 88:17	150:21	65:23 68:15 89:2,4	151:2 168:6 169:12	48:6 50:3,4 57:4
91:6 126:17 154:9	relate 172:21 182:6	89:14,15,21,23	178:16 179:9	58:21 59:21 66:22
189:1	related 77:10 78:14	96:22 97:3 107:11	180:13	74:25 77:21 78:18
recognize 94:18	79:1 164:3	108:13,15 148:22	responsibility 10:13	85:17 86:12 97:25
102:1 118:13 124:2	relative 63:18 69:16	151:21,23 159:6	11:25 22:21 23:20	108:2 127:4,13
157:25 158:18	relatively 35:2 139:24	163:2 165:8 167:1	23:22 25:24 61:11	129:16 130:2,11,16
recognizes 111:2	relayed 137:13	requested 79:23	63:18 67:14,15,20	131:4,7,23,25 132:1
recollection 24:20	183:16	96:24 182:11	68:14 109:2 117:25	132:7 133:18
105:10 126:3,8	relevance 169:21	requesting 88:24 98:8	119:8 131:8 147:25	134:10,11 135:3
reconvened 91:7	relevant 170:5	requests 10:14 24:9	158:8	137:3 138:3,6
record 6:20 13:22	relief 1:10 2:10 6:8	44:13 66:13 79:13	responsible 36:12	139:24 140:2 141:4
14:4 16:4,7 33:11	82:23 127:20 169:3	89:11 94:6 96:17,18	65:7 117:16 118:22	142:15,21,22 143:8
33:14 51:23,25	169:4 171:9	97:3,6 121:24	148:13 149:7	143:14,19 144:12
54:20,21,23,24	relocated 103:16	130:17 131:17	155:22 157:3,6	144:15 145:19,23
57:17,20 67:10,11	rely 52:11,13 54:10	149:21 152:3	158:9 163:23 164:7	146:10,13 147:4
67:15,16 85:13	remain 60:17 80:19	157:10 159:3	182:1 184:10	150:24,24 151:7,21
88:14 92:12 94:25	112:22 141:14	162:22 165:17,25	responsive 106:18	152:25 157:21
95:18 104:22	remained 46:15 80:20	166:6 167:1	rest 23:14 74:22	164:12 181:1,10,15
111:16 118:24	93:15	require 86:25 96:20	90:21	186:12 188:10
119:2 123:7 124:13	remains 46:17	96:21 105:4 106:4	restock 133:12	189:18 190:24
126:15 154:6,16	remand 13:3	109:6,10,14 121:21	restocked 44:2	191:11
168:11 174:6	remedy 8:5 13:1,4,7	141:7,8 156:9 157:5	restocking 18:13,14	ring 22:14 107:19
188:21 189:8 192:9	remember 35:17	required 141:3	18:15 43:16 94:1	176:3
recorded 57:6 86:9	105:10 129:1,2,24	requirements 182:6	rests 90:22 189:2,3	ringing 65:14
86:11 136:25 137:1	183:5	requires 186:3	result 106:25 153:4	rings 41:20 108:10
137:2	removal 93:25 96:12	reserve 13:10	153:18 182:12	ripping 185:22
records 15:5 171:18	96:13,13	resident 20:9 22:15	184:15	road 2:17 7:21
recovery 188:16	removed 40:2 96:15	residents 36:25 37:7	resulted 182:12	Robert 177:14
RECROSS 4:3 56:17	repairs 16:10	resign 187:11	resumed 95:21 104:2	Roger 3:8 6:14
150:16 153:9 188:3	repeat 24:22 103:8	resources 171:21,22	retain 13:6	role 113:15 126:6
Red 174:13	109:9 116:9 119:23	respect 10:24,25 13:1	retrieve 22:17	157:1 158:4,24
REDIRECT 4:3 52:2	130:19 149:14	23:9 28:17 57:22	retrieving 23:1	187:3,8
90:11 148:8 151:13	rephrase 39:14	64:12 66:18 68:1	retroactively 12:17	roll 188:13,13
186:20	182:14	80:7 117:25 119:9	return 22:18 48:24	room 9:14 15:2,3,8,10
reduction 33:3	replace 113:16	119:11 132:13	54:22 65:2	15:14 18:14,15,24
referred 16:6 21:4	replaced 128:9	150:18 158:24	reversed 21:11	19:6 20:11 21:11,12
54:25 59:24 60:24	replacing 96:14	172:5,10 174:3	review 177:5 184:10	22:16,18 23:6,15,16
66:24 139:24	report 20:5,20 21:4,5	respond 24:13 49:21	reviewed 177:9	23:18 24:2 26:24
referring 15:6 118:18	22:8 28:7,8 38:15	63:18 89:15 94:6	revise 182:3	37:19,20 38:25
138:16	51:7,18 54:9 70:3,5	96:16 107:8 108:14	revised 95:13 139:2	44:12,12 51:12
refill 111:25	70:7,19 74:5,19	108:19,23 132:9	181:12	54:22 55:6,7 59:15
reflect 103:5,9	85:24,25,25 86:1,3	149:19 157:9 159:3	revising 182:2	62:14 63:15,15
reflects 158:12	86:4 135:21,25	162:21 163:2,5,9	revisions 181:12,19	64:23 67:16 70:7
regard 6:8 66:20	136:3,17 137:6,8	183:11 185:11	182:5	72:2 88:5,8 93:22
124:9 147:22 158:4	148:1 183:3	186:8	RHC 82:22 138:15	94:5 97:1 98:3,7,11
regarding 77:23,24	reported 1:25 192:5	responded 11:19	168:25 169:2,10,13	98:12 99:16 100:1,5
77:24 78:11	reporter 14:1,3	responder 183:15	169:18 170:18,23	100:12 103:12
regardless 78:5	106:19 192:1,5,19	responding 66:7,18	171:4,12,18,24,25	108:18 115:18
regards 113:20	reporting 51:9,10	107:22 149:12,17	175:19 176:17,19	133:24 135:1
region 5:10 155:15,25	reports 70:21	152:3 186:2	176:23 178:1,2,12	141:12,14 143:16
156:1 158:10 188:9	represent 103:19	response 4:24 7:6	179:3 182:25,25	143:21,23 145:11

PROCEEDINGS April 24, 2007

151:24,24 155:11 157:5 160:15,18 188:17 rooms 10:8,17 15:12 16:9 18:19 21:23,25 22:1,2,3,4 35:11 52:19,20,22 64:5 66:13 72:16 74:9 78:5 79:24 86:21 87:23 88:3,5 93:25 95:24 96:1,8,10 160:11 173:13 Rosenfeld 3:8 6:14 rotate 142:13 rotated 129:16 141:20 153:14,15 rotates 82:7 rotation 60:21 82:1 rotational 9:21 60:21 101:17 116:1 roughly 82:9 129:3 130:7 147:1,1 rule 76:16 85:16 190:15 run 65:10 71:17 running 21:23 65:11 71:19 72:2 185:21 186:17	176:14 scheduled 69:4 87:12 87:15 schedules 23:14 Schwehr 176:15 scope 18:21 scopes 18:18 Scott 3:14 6:15,19 screen 154:20 script 190:21 seat 13:16 second 4:24 51:13 57:18 95:6 102:15 118:25 181:10 Secondly 11:18 seconds 123:11 second-hand 163:19 second-level 7:6 second-step 7:6 see 14:3 22:23 43:19 45:15 67:18 76:23 86:18 90:20,25 108:18 163:4 175:11 176:19,23 190:8,16 seek 11:5 66:6,9 seen 60:5 SEIU 169:14,16 182:22 187:25 self 96:3 self-addressed 191:2 send 66:3 sent 124:16 separate 101:9 179:8 September 92:20 126:25 127:1 serious 134:20 135:4 serve 190:24 service 6:6,9 24:24 122:4 165:18 SERVICES 1:7 2:7 SESSION 4:12 92:1 set 15:15 23:18 37:18 37:19 38:22,23 39:2 39:3,4 48:7 65:10 71:16 87:2 93:21,22 95:24,25 142:14 164:8 sets 16:8 setting 51:3 63:10 94:2 140:24 setup 18:4 setups 86:25 87:1 shaking 14:9 share 157:15 sheer 64:17	sheet 14:1 17:22,23 20:6 22:23 28:16 38:15 61:13 69:12 69:18 128:21,22 132:16 134:7 sheets 18:16,21 69:15 Sheryl 4:7,10 154:10 154:17 she'd 183:21 shift 8:21,23 9:2,11 9:24,24,25 10:4,5 10:19,23 11:21,23 11:23 16:20,25 17:1 17:2,5,13,19 18:23 19:8,11 20:18 21:1 21:1,5,8,18,22 22:10 25:18 26:10 27:13,25 28:3,5,5,7 29:24,25 30:6,11,11 30:13,16,20 31:7,12 31:15,18,23 32:1,2 32:5,7,11,16 33:19 33:21 34:2 50:23 51:1,6,8,11 52:8 54:9 56:9,11,12 57:14,14 58:10,12 58:18,19 60:13,15 60:16,17,20,22,23 60:24 61:2,5,8,10 61:19,21,23 62:11 62:16,17,18,20,21 62:22,25 65:20 66:5 66:23,24 69:4,11,13 69:19,20,22 70:1,22 72:2,15 73:1,3,4,7,8 73:14,21,23 74:7,16 75:5,13,24 76:6 77:9,10,23 78:14 80:12,16 81:18 86:1 86:14 87:17,18 89:9 107:20,22,22,25 108:3,5,9 114:13,14 114:17,18,18,19,19 114:21,23 115:3,6 121:7,8 123:1,2 127:15,17,20,21,23 127:24 128:2,4,17 129:17 130:8 132:21,22,25 133:24 135:9,14,16 135:17,18,18 136:1 136:3,3,7 137:6,17 137:25,25 138:7 141:20,22 142:14 142:23 146:9 148:1 149:17 150:23,24	151:9,17 152:4,12 152:13,13 161:10 162:21 167:21 173:16 shifts 30:5,9,19 31:21 60:12,19 62:23 65:25 69:19 80:12 114:15 115:9,12,13 115:15,16 121:6 127:21 shift-by-shift 69:9 shop 59:18,19 75:14 75:18 77:21 shorter 87:20 150:8 shorthand 192:1,5,6 192:8,19 shortstaffed 117:13 shortstop 174:15 show 8:24 83:25 84:3 94:15 118:5 157:12 showing 123:25 176:3 shown 101:24 shows 95:6 sick 113:12,14,16 117:9 side 7:20 113:8,8 190:16,21 sides 170:13 189:11 sidetracked 151:20 151:23 sign 83:9 119:17,18 176:8 signature 145:25 signed 177:9 significant 134:19 significantly 171:1 signify 100:4 signing 133:13 sign-in 14:1 similar 25:24 28:8 72:11 135:3 similarly 130:3 simplest 63:8 simplicity 72:14 simply 12:6 25:11 70:15 149:12 simultaneous 191:3 sir 13:22 14:7 20:2,15 25:1 32:3 33:15 36:14 39:14 41:13 41:16,21,24 42:8 45:6,19 48:4 53:7 54:12 55:11 58:13 75:18 sitting 127:9,10 situation 65:12	140:21 170:25 179:8 six 87:18 108:6 115:1 130:7,24 132:13 134:3 141:23 142:5 155:7 slightly 36:11 soiled 18:14 somebody 76:18 145:18 183:10 someone's 47:7,10 someplace 136:17 Somewhat 83:21 soon 131:9 sorry 12:24 17:15 18:6 23:21 24:22 25:6 31:3 32:3 35:17 39:14 48:20 68:21 110:20 118:25 sort 70:11 116:20 121:12 135:21 143:5 149:25 158:23 sorts 46:25 sounds 23:2 Sox 174:14 so-called 60:8 speak 14:15 77:8,20 100:12 127:7 182:24 183:2 special 8:22 105:4 106:5 125:3 141:3 161:5 191:5 specific 39:2 44:12 46:3,5 49:13 78:17 79:13 86:25 93:22 96:17,19 97:2 98:15 98:15 100:3 148:15 148:17 specifically 82:21 99:11 114:25 131:2 131:5 156:22 166:21 specified 149:24 specify 130:1 Spectra 8:3 9:3 32:7 49:12 180:3 184:14 184:15 185:16 Spectralink 8:9 9:3 10:1,2,13 12:19 16:6 17:25,25 18:11 19:19,23 20:7 22:7 22:14 23:8,19 24:13 24:17,23 25:9,12,15 25:25 26:6,11 27:3
---	--	--	---	--

PROCEEDINGS April 24, 2007

27:18,23 28:4,18 30:12 31:10 32:22 35:5,14 36:2,16 37:3,5,9 38:19 39:6 39:18,21 41:8,11,18 42:5,20 43:11 44:4 44:10,17 45:5,9,13 45:23 46:1,2,3,7,19 47:1,5,6 48:3 49:14 49:16,20 50:20 52:13 53:5,7,8,11 53:15,17,20,22,24 54:2,15,19 55:10,20 56:20,25 57:8,15,25 58:11,14 59:24 61:2 61:15 62:5,11,17 63:5,13 64:9 65:9 65:25 66:2,7 67:9 68:1,13,22 69:1,17 69:21,24 70:25 72:8 73:14,17 74:6,13 77:25 78:2 79:2,11 79:15 80:5,16 82:15 86:2 88:11,20 89:8 90:15 97:11,13 99:4 100:14,15,17,19,25 101:2,4,6,8,12,15 103:15,23 104:5,8 105:5,9,23 106:1,6 106:10 107:1,4,5,14 107:19 108:8,17 109:1,5 116:5 117:3 120:22 121:9 122:10,11 126:1 128:17,23 129:21 130:4,9,18,21,23 131:19 132:20 133:1,17,22 134:8 135:6,25 136:8,22 137:9,18,21 139:12 139:16 140:11 144:20,24 145:5,8 145:15 146:15 147:11 148:25 149:7,8,11,16 150:19 152:2,4,6,8 159:11,13,14,19 161:3,6,8,16,23 162:4,6,16,20 165:15,16 166:16 166:18 167:7,22 168:3 172:8 173:2,8 180:13,20 184:21 185:4,12 spectrum 188:14 speculation 73:24	74:15,17,19,20,23 75:4 speculative 75:1,9 spell 92:11 154:15 spend 149:17 152:3 spends 149:12 spent 179:2,24 spoke 77:18 183:5,6 spoken 183:4 stack 157:19 stadium 174:21 staff 23:14 79:12,13 80:25 163:24 168:25 186:1,15,18 staffing 10:7,7 141:23 142:3,4 staffs 18:3 stamp 18:20 stamped 18:17 191:2 stand 74:22 176:4 Stanford 1:4 2:4 5:8 5:10,12 6:5 14:20 16:3 34:5 50:6 59:7 92:15,18 93:6 154:24 155:2 156:15 186:23 start 16:11 21:10 38:22 65:16 71:21 148:11 151:17 started 34:11 74:10 starting 38:23 starts 51:6 state 7:20 77:15 92:11 154:15 182:7 stated 10:12 163:12 192:7 statement 8:15 13:9 148:5 statements 77:17 states 7:24 stationed 58:8 status 135:21 136:2 137:4 STAUDOBAR 1:2 2:2 3:4 stayed 128:1 stays 67:8 steps 162:17 steward 59:16,18,19 75:14,18 77:21 83:20 stipulate 7:18 76:8,11 stipulated 7:11 stocked 96:5,25 stocking 93:24 stop 12:5,5 22:16	stopped 12:4 32:18 32:21 33:1,5 45:14 129:25 storage 68:9 store 133:9 strike 15:19 56:9 63:3 71:4 74:23 85:7 106:13,15 153:11 178:1 Stuller 1:25 2:18 192:4,18 subcontracted 77:6 subject 74:23 90:21 90:22 126:21 177:5 submit 189:22 190:19 submitted 177:6 subsequent 95:12 109:23 110:1 subsequently 172:1 substantial 10:24 16:19 sudden 125:6,8 sufficient 18:4 suggest 129:13 suite 3:9 93:22 94:5 96:20 100:7,10 142:12 148:17,24 149:7 suites 64:8 134:14,17 141:21,21 142:10 142:13 143:9 144:18 145:7 148:13 150:11 173:11 summary 93:19 Sun 183:6 supervise 93:13 supervising 184:3 supervisor 19:7,8 29:25 30:22,25 47:17 66:24 177:8 supervisory 177:5 187:19 supplied 19:15 supplies 10:6 11:8 15:9,13 23:2 63:8 68:3,6,10,15 89:7,7 89:9,11 141:4 157:7 167:1 supply 18:15 43:21 44:6 93:24 96:4 164:4 support 36:25 supporting 37:6 48:14 suppose 188:5	supposed 39:16 41:23 50:24 51:15 89:15 108:23 135:10,15 145:12 148:18 supposedly 83:16 sure 16:17 18:16,21 29:3 40:8,10 44:2 45:19 52:21,22 54:15 76:18 127:12 163:21,24 174:7 175:4 183:21 184:10 188:22,25 surgeons 144:5 surgeries 32:13 34:18 72:20 86:22 134:22 140:23 144:7 173:20 surgery 9:14 99:10 99:17 155:13 surgical 35:19,19 47:2,7 52:17 72:7 72:19 95:24 97:4 116:7,12 125:9 141:15 150:5,12 173:4,9,12,18 suspensions 120:2 sustained 75:10 switch 21:9 51:12 99:25 100:3 switched 70:8 switches 67:16 sworn 13:18 59:2 92:7 154:11 system 45:2 46:25 64:1 65:1,5 69:6 82:11,12 97:14,24 98:2,10,14,21,23 99:13,14,15,17,21 113:18 143:15 160:14,21 systems 96:3 99:1 100:18 143:13 S-C-H-W-E-H-R 176:15 S-H-E-R-Y-L 154:17 S-P-E-C-T-R-A 8:3 S-P-E-C-T-R-A-L-... 8:9 S-U-N 183:6 T tag 40:2,3,9 take 22:17 34:23 40:21 69:23 85:25 91:1,3 94:17 99:6 104:21 117:14,22	119:14 120:3 123:9 125:2 126:12,14 150:1 156:12 158:15 161:5 162:19 165:14 169:11 181:5,10 189:6 taken 2:16 75:15 91:6 takes 40:17 talk 28:19 127:10 132:22 143:14,25 144:12 148:10 159:10,17 167:3 189:6 190:16 talked 25:8 43:16 50:25 85:24 87:11 115:8 139:11 147:22 183:20 talking 22:6 51:7 88:7 130:22 131:20 135:8 145:6 154:20 168:19 task 42:17 106:12,12 109:11,13 151:10 tasks 109:20 117:9 151:10 152:6,7 team 48:24 137:16 182:12,16,19,22 185:17 tech 5:6 8:21 10:3 11:15 15:23 16:8,21 22:12,13 30:7 34:20 35:20,22 37:10 41:4 41:11,18 42:1,15,16 42:17,23,24 44:18 44:24 45:11,14,22 45:25 46:13,16,19 47:6,11,15,19 48:7 54:16 62:14 72:24 74:6,7,11,20 77:23 78:1,1,5,6,10,11 79:12,21,22 89:8 90:2 93:6,7,9,16,20 95:25 97:6,9 98:5 101:12,16 105:18 105:19 106:11 107:15,21,25 108:8 108:10,14,17,22,25 109:1,6,6,10,23,24 110:7 111:9,20 112:16 113:2 114:8 114:10,13 115:23 115:25 116:8 117:2 117:5,18,18 118:19 118:21 119:13,21 119:24 120:10,12
---	--	--	--	---

PROCEEDINGS April 24, 2007

120:22 121:2,3,7,9 121:10,13,16,20,23 122:4,4,6 123:5 124:8,12 125:21,25 126:1,4,6,7 127:2 127:14 128:13 134:2,5 135:11,12 137:19 138:16 139:12,14,15 141:12 146:20,21 147:7 148:11,12,16 148:20,24 149:3 151:17,20,24 152:11 156:23 157:1,20 158:13 159:2,7 161:9 162:6 162:19,21 163:14 163:17 164:11,24 165:6,7,10,11,14,16 166:8,11,15,24 167:3,11,15,19,23 170:21,22 172:10 173:1,8 174:2 180:24 181:13,21 technician 5:5 15:22 16:7 59:14 93:2 94:23 99:25 100:21 101:7 102:10 111:7 158:3,21 181:25 technicians 101:5 113:6 technician's 124:14 technology 161:19 186:7 techs 1:10 2:10 6:7 8:2,7,23 9:12 11:4 11:16 17:5 26:19 33:19,20 41:3 44:4 52:8 55:22 57:25 58:18 65:6 73:14 78:14 81:23 87:8,11 87:12 89:11 93:13 94:7 95:11 97:4 99:7,9,10 101:3 108:22 109:3 113:6 113:23 114:11,23 115:9 116:16,25 119:22,25 120:7,7 120:18,24 121:4,23 129:17 130:3 132:9 134:8 140:11,22 141:14,20,23 142:2 142:13,24 149:21 150:22 151:4,6 153:14,18 159:20 161:22 164:25	166:9,19 167:2 168:2 172:7,15,18 176:12 tech's 44:4 74:8 78:4 79:23 109:11 112:19 113:9 117:7 119:17 telephone 9:9 10:22 65:14 90:13 97:19 97:20 131:2 162:18 185:21 telephones 11:12 65:21 139:11 tell 16:6 18:10 32:5 39:4,7 45:7 49:23 65:15,15 84:13 86:20 94:17 102:1,8 107:24 111:1,5 112:11,25 118:12 118:16 119:6 124:2 124:20 157:24 158:12,17,20 159:13 160:2 175:4 175:21,22,23 telling 29:7 48:7 tells 100:7 temperature 125:7,8 temporarily 179:1 tend 52:11 71:18 87:19 107:3 144:24 150:8 term 8:19 52:24 82:18 85:6 188:6,9 terminated 8:1 80:22 80:24 81:8,16 terms 9:18 32:2 54:10 56:6 62:19 64:14 68:14 69:25 140:22 173:15 test 96:3 testi 170:4 testified 13:19 33:18 43:14,15 55:20 59:3 63:22 88:10,19 89:6 92:8 96:16 124:6 146:6 147:23 154:12 159:3 173:7 179:10 184:23 testify 76:6 77:16,17 testifying 48:22 152:17 174:17,19 testimony 10:11 14:6 14:17 41:1,5 43:15 52:5 58:10 74:2 76:12,12,12 85:15 103:18 126:21	130:6 139:8 151:15 156:25 174:25 178:11 180:22 testing 140:24 thank 8:11 12:20 13:14 14:19 15:5 33:10 56:16 58:4,22 73:25 90:19 102:25 104:1 118:7 154:1,3 168:13 188:20 191:4,12 thanks 191:6 then-manager 125:25 thing 14:14 49:5 50:2 158:17 things 15:15 18:18 19:16 24:11 29:5 32:15 46:12,25 51:14 55:6 66:16 70:9 81:20 86:20,23 86:24 121:21 131:12 134:23 151:18 152:22 159:2 176:8 think 16:23 30:24 44:11 45:16 57:21 74:25 75:11 77:5 85:8 86:19 88:10 96:8 106:4,15 107:24 109:21 117:5 123:12 152:20 154:21 157:18 161:18 167:4,25 169:21 170:6,7,8,15 173:7 175:10,12,12 180:22 181:6 188:19 189:5,10,20 189:24 third 43:18 51:13 102:11 174:15 179:4 thought 76:23 77:1 110:11 three 74:10,18 87:14 104:14,16 116:17 155:22 161:19 164:23 177:25 180:5 tight 176:3 till 67:8 155:23 175:7 178:10 time 8:25 9:22 21:18 23:16 25:21 27:7,15 27:20 28:19,19 32:15,20 33:1 34:4	34:15 35:3 45:19 48:4 50:9 51:3,4 52:1 56:1 65:8 71:18 72:1,17 73:7 73:12 78:10 79:4,5 79:19 80:11,14,22 81:1 82:13 99:12 105:12 110:4 114:7 114:11 116:2 117:1 122:25 125:21 127:5 128:15,16,16 129:10,23,25 131:13 135:22 136:2 150:1,23 152:3 160:11,11,12 164:17 165:21,22 168:1,25 169:12 171:1 175:2,4,6 176:24 178:6,25 179:2,13,18,20,24 179:25 180:7 181:1 181:20,24 186:17 187:3,8 191:13 192:6,10 timecard 82:22 83:2 83:9 119:7 138:15 timecards 168:19 176:7,8,12 177:4,9 183:23 184:10 timeframe 20:25 147:10 185:6 190:3 191:10 timely 186:2 times 9:21 24:5 31:16 33:4 39:17 46:6 88:2 108:7 119:16 122:23 124:20 127:22 144:9 156:10 169:8 186:4 today 6:19 110:10 148:12 151:18 told 37:12 57:13 77:15,18 80:25 82:21 83:15,17 84:8 84:11,13,14,18,20 85:19,22 128:7 131:7,11,14,15 135:14 141:22 top 16:23 40:11,12 104:4,4 154:20 total 155:24 tough 170:11 trailing 164:6 trained 70:19 training 60:5,8,10 62:2 82:14 105:4	106:5 161:5 transcript 1:15 2:16 190:4 192:8 transfer 21:15 transition 187:3,13 transplant 31:22 transplants 134:23 transport 179:22 transporting 178:21 trash 96:13 trauma 63:9 treatment 173:13 trial 164:8 tried 171:17 triggered 138:20 troubleshoot 16:10 true 26:6,8 29:22 37:9 42:15,19 45:21 134:19 136:10 138:14 144:5,17 145:7 174:13 176:10 192:8,9 truth 174:20 try 66:12 152:21 178:25 trying 65:17 175:10 tubes 15:14 turn 15:13 38:25 39:12 70:21 89:21 96:2 100:3 150:12 turndown 96:8 turned 144:11 turning 22:16,18 94:4 turnover 15:12 22:8 38:24 72:3 87:22 96:7,10 turnovers 62:14 93:25 173:23 Twenty-one 22:5 Twenty-six 155:3 twice 155:13 two 18:1 25:4 30:19 34:3 56:25 58:16,17 87:14 102:18,19 103:4 115:7,16 143:12 161:19 170:17 175:13 180:5 type 32:15 87:4,5 113:21 125:3 137:24 161:25 176:19 types 51:14 79:10,18 99:1 typical 31:11 84:9,15 107:25 123:10
---	---	---	--	--

PROCEEDINGS April 24, 2007

142:4 151:2 173:16 179:11,12 typically 19:11 21:24 52:7,20 96:25 97:13 107:19,23 123:2 132:21 133:19 134:16 141:23 150:10 167:7 189:25	unusual 169:12 178:16 179:9 updated 54:11 upper 145:22 ups 15:15 87:2 use 16:15 18:17 25:13 26:15 32:2 37:14,15 39:20 44:17 52:19 52:24 55:1 72:16 82:15,18 95:14 96:23 98:23 101:3 102:5 118:2 120:18 122:19 133:9 139:12 142:10 144:19 145:7,9 159:16 180:4 usual 10:16 185:8,12 190:15 usually 160:7 190:18 utilize 125:4 utilized 11:14 55:21 55:21 103:6,10 115:20 170:7 utilizes 117:2,18 utilizing 170:7	Vincent 3:8 6:13 violated 7:25 violation 12:11,14 13:2 virtue 39:17 voice 154:22 voicemail 65:22 Voir 4:8 95:2,4 102:24 103:1 volume 36:7,8 62:20 62:24 64:17 78:9,15 80:6,8 88:4 90:14 150:4 184:19	88:20 89:5,19 128:24 weeks 74:10,18 103:4 week-long 68:25 82:5 weight 170:6 Weinberg 3:8 6:14 went 56:3 88:19,20 164:17,18 176:14 weren't 57:7,8 149:2 we'll 57:23 95:17 104:24 111:15 123:17 125:15 190:17,19,24 we're 12:3 22:6 39:10 39:12,23 51:12 117:13 130:22 131:20 135:8 137:24 142:18 164:6 189:10,13 we've 10:2 16:5 39:12 59:24 76:5 82:5 87:9 124:19,19 156:25 whiteboard 87:7 136:11 wind 189:14 withdraw 12:6 146:24 witness 13:15 17:17 33:10 38:9 48:23 58:25 76:6,15 81:7 83:25 84:4,6 85:1,6 92:4 94:19 95:2 97:17,21 104:15 105:15,19 111:3 118:14 124:3 154:3 169:25 170:15,17 174:21 188:14 witnesses 4:2,3 184:23 189:12 witness's 85:15 woman 146:7 word 138:2 words 28:24 113:1 work 9:13,17 11:16 12:7 14:19 16:1,25 17:5 18:25 20:5 22:22 26:22 35:1,21 35:23 36:3 38:15,17 60:11,21 62:19 63:19,21 64:1,4,7,9 64:23 73:4,20,23 78:12 85:4 93:13 96:23 98:2 99:23 106:11 112:15 113:8 114:4,13,15	114:19,23 115:2,10 115:17 127:17 128:20 133:9 137:16 140:4,5,12 150:4 160:14 161:9 161:15 162:6 163:19 168:7 174:2 174:5 176:21 178:13 179:3,5,7 184:16 185:19 worked 30:5,9 34:12 34:17 35:18,25 52:16 60:11,19,20 76:6 80:11 92:18 107:21 114:14 155:2 worker 69:7,7 working 14:22 34:11 35:8 37:1,7 51:2 52:6 53:16,19 55:19 57:9,13 73:7,13 75:12 83:16 84:8,19 84:20 85:20,22 125:21 128:3,12 147:7 153:13 173:8 179:13 184:18 workload 106:25 workroom 5:11 11:16 14:25 15:7,8,13,18 23:13 24:6 26:13,25 34:16 41:15,17 43:4 50:17 52:8,12 54:14 54:23 56:22,24 63:23 65:22 67:17 68:7,8,11 70:11,13 97:10 98:17,18,20 98:24 99:5,16,18,20 99:22 100:4 102:12 102:16 103:22 108:9 113:3,22 117:8 118:3 122:1,1 136:20,21 137:14 138:24 144:23,23 145:17 148:21 149:20 159:11 160:22,25 163:5,7 works 147:1 workshop 15:11,18 worry 48:22 wouldn't 51:15 137:22,22 write 43:9 50:25 51:15 54:22 88:24 169:23 writes 57:4 writing 29:10 192:6
U Uh 59:21 uh-huh 14:9 19:20 20:24 23:21 29:11 40:7 47:25 48:9 49:15 96:11 116:14 130:13 139:1 ultimately 170:9 Umm 69:8 unable 7:17 79:14 uncommon 10:20,21 undergoing 124:24 understand 7:21 14:10,13 19:1 23:23 25:6 63:17 67:11,19 68:14 110:9 132:22 142:17 146:23 151:15 176:4 177:8 178:8,12 179:6 181:5 understanding 45:3 66:19 72:22 73:18 130:2 131:16 132:7 135:9,19 153:12 169:13,18 170:5,8 170:17 171:7 183:11 185:5 understood 11:3 29:15 133:16 138:2 138:19 176:19 unfortunately 127:9 unilateral 12:8 unilaterally 12:3,13 Union 1:7 2:7 3:7 6:6 6:13 7:24 8:13,16 9:13 57:21 59:17 78:12 90:22 175:1 unit 24:24 55:19 75:2 127:4 128:12 136:12 147:7 153:13 155:13 175:19 185:9,13 units 52:9 116:22 134:9 169:9 176:13 unquote 65:19 177:2 178:16	use 16:15 18:17 25:13 26:15 32:2 37:14,15 39:20 44:17 52:19 52:24 55:1 72:16 82:15,18 95:14 96:23 98:23 101:3 102:5 118:2 120:18 122:19 133:9 139:12 142:10 144:19 145:7,9 159:16 180:4 usual 10:16 185:8,12 190:15 usually 160:7 190:18 utilize 125:4 utilized 11:14 55:21 55:21 103:6,10 115:20 170:7 utilizes 117:2,18 utilizing 170:7	W wait 65:15 66:14 132:3 waiting 186:9 waived 7:12 walking 143:5 159:18 162:25 wall 97:18 185:22 want 29:3 36:10 48:7 48:8 70:3 90:24 142:17 161:18 165:19 175:11 191:9 wanted 104:21 143:19 178:25 182:3 ward 143:16,18 Warnings 120:2 wasn't 38:5 49:20 58:7 73:19 74:14,16 74:18 75:6 84:22 103:13 126:2,4 137:11 139:11 167:21 179:11,16 179:17 181:1 wasting 186:16 way 11:24 12:25 20:9 20:10 23:17,25 25:16 26:17 44:16 49:13 52:14 54:15 70:14 85:6,9 104:19 105:14 107:8 108:5 132:5,8,19 137:16 139:20 153:14 167:25 172:7 185:19 191:8 ways 11:10 24:3 26:9 56:25 97:8 170:18 week 9:22 45:8 82:9 89:19 weekends 156:12 weekly 25:22 27:11	we'll 57:23 95:17 104:24 111:15 123:17 125:15 190:17,19,24 we're 12:3 22:6 39:10 39:12,23 51:12 117:13 130:22 131:20 135:8 137:24 142:18 164:6 189:10,13 we've 10:2 16:5 39:12 59:24 76:5 82:5 87:9 124:19,19 156:25 whiteboard 87:7 136:11 wind 189:14 withdraw 12:6 146:24 witness 13:15 17:17 33:10 38:9 48:23 58:25 76:6,15 81:7 83:25 84:4,6 85:1,6 92:4 94:19 95:2 97:17,21 104:15 105:15,19 111:3 118:14 124:3 154:3 169:25 170:15,17 174:21 188:14 witnesses 4:2,3 184:23 189:12 witness's 85:15 woman 146:7 word 138:2 words 28:24 113:1 work 9:13,17 11:16 12:7 14:19 16:1,25 17:5 18:25 20:5 22:22 26:22 35:1,21 35:23 36:3 38:15,17 60:11,21 62:19 63:19,21 64:1,4,7,9 64:23 73:4,20,23 78:12 85:4 93:13 96:23 98:2 99:23 106:11 112:15 113:8 114:4,13,15	worked 30:5,9 34:12 34:17 35:18,25 52:16 60:11,19,20 76:6 80:11 92:18 107:21 114:14 155:2 worker 69:7,7 working 14:22 34:11 35:8 37:1,7 51:2 52:6 53:16,19 55:19 57:9,13 73:7,13 75:12 83:16 84:8,19 84:20 85:20,22 125:21 128:3,12 147:7 153:13 173:8 179:13 184:18 workload 106:25 workroom 5:11 11:16 14:25 15:7,8,13,18 23:13 24:6 26:13,25 34:16 41:15,17 43:4 50:17 52:8,12 54:14 54:23 56:22,24 63:23 65:22 67:17 68:7,8,11 70:11,13 97:10 98:17,18,20 98:24 99:5,16,18,20 99:22 100:4 102:12 102:16 103:22 108:9 113:3,22 117:8 118:3 122:1,1 136:20,21 137:14 138:24 144:23,23 145:17 148:21 149:20 159:11 160:22,25 163:5,7 works 147:1 workshop 15:11,18 worry 48:22 wouldn't 51:15 137:22,22 write 43:9 50:25 51:15 54:22 88:24 169:23 writes 57:4 writing 29:10 192:6
V vacant 112:7 164:12 167:16 vacated 112:9 vacation 156:11 Vague 47:3 varied 152:12 varies 150:6 variety 11:10 16:12 various 9:15,21 10:14 60:11,12,13 64:4,12 69:20 79:14 93:23 97:8 133:24 134:21 139:10 140:23 141:21 156:15 167:10 181:12 vary 17:8,10 150:6 venture 62:22 72:18 verbal 9:10 14:8 67:20 70:14,19,21 136:16 137:1,6,7 verbalize 67:23 verbally 29:13 version 7:20 versus 73:19 162:3 179:3 VIDEOGRAPHER 105:21 Village 3:9 Vince 174:25	Vincent 3:8 6:13 violated 7:25 violation 12:11,14 13:2 virtue 39:17 voice 154:22 voicemail 65:22 Voir 4:8 95:2,4 102:24 103:1 volume 36:7,8 62:20 62:24 64:17 78:9,15 80:6,8 88:4 90:14 150:4 184:19	wait 65:15 66:14 132:3 waiting 186:9 waived 7:12 walking 143:5 159:18 162:25 wall 97:18 185:22 want 29:3 36:10 48:7 48:8 70:3 90:24 142:17 161:18 165:19 175:11 191:9 wanted 104:21 143:19 178:25 182:3 ward 143:16,18 Warnings 120:2 wasn't 38:5 49:20 58:7 73:19 74:14,16 74:18 75:6 84:22 103:13 126:2,4 137:11 139:11 167:21 179:11,16 179:17 181:1 wasting 186:16 way 11:24 12:25 20:9 20:10 23:17,25 25:16 26:17 44:16 49:13 52:14 54:15 70:14 85:6,9 104:19 105:14 107:8 108:5 132:5,8,19 137:16 139:20 153:14 167:25 172:7 185:19 191:8 ways 11:10 24:3 26:9 56:25 97:8 170:18 week 9:22 45:8 82:9 89:19 weekends 156:12 weekly 25:22 27:11	we'll 57:23 95:17 104:24 111:15 123:17 125:15 190:17,19,24 we're 12:3 22:6 39:10 39:12,23 51:12 117:13 130:22 131:20 135:8 137:24 142:18 164:6 189:10,13 we've 10:2 16:5 39:12 59:24 76:5 82:5 87:9 124:19,19 156:25 whiteboard 87:7 136:11 wind 189:14 withdraw 12:6 146:24 witness 13:15 17:17 33:10 38:9 48:23 58:25 76:6,15 81:7 83:25 84:4,6 85:1,6 92:4 94:19 95:2 97:17,21 104:15 105:15,19 111:3 118:14 124:3 154:3 169:25 170:15,17 174:21 188:14 witnesses 4:2,3 184:23 189:12 witness's 85:15 woman 146:7 word 138:2 words 28:24 113:1 work 9:13,17 11:16 12:7 14:19 16:1,25 17:5 18:25 20:5 22:22 26:22 35:1,21 35:23 36:3 38:15,17 60:11,21 62:19 63:19,21 64:1,4,7,9 64:23 73:4,20,23 78:12 85:4 93:13 96:23 98:2 99:23 106:11 112:15 113:8 114:4,13,15	worked 30:5,9 34:12 34:17 35:18,25 52:16 60:11,19,20 76:6 80:11 92:18 107:21 114:14 155:2 worker 69:7,7 working 14:22 34:11 35:8 37:1,7 51:2 52:6 53:16,19 55:19 57:9,13 73:7,13 75:12 83:16 84:8,19 84:20 85:20,22 125:21 128:3,12 147:7 153:13 173:8 179:13 184:18 workload 106:25 workroom 5:11 11:16 14:25 15:7,8,13,18 23:13 24:6 26:13,25 34:16 41:15,17 43:4 50:17 52:8,12 54:14 54:23 56:22,24 63:23 65:22 67:17 68:7,8,11 70:11,13 97:10 98:17,18,20 98:24 99:5,16,18,20 99:22 100:4 102:12 102:16 103:22 108:9 113:3,22 117:8 118:3 122:1,1 136:20,21 137:14 138:24 144:23,23 145:17 148:21 149:20 159:11 160:22,25 163:5,7 works 147:1 workshop 15:11,18 worry 48:22 wouldn't 51:15 137:22,22 write 43:9 50:25 51:15 54:22 88:24 169:23 writes 57:4 writing 29:10 192:6

